①

Supreme Court, U.S.
FILED

04 491 OCT 0 5 2004

Docket No. ____________

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2004

DURAND DICKERSON
PETITIONER

V.

G. RONALD BATES JR., CHARLENE BROWN, PAUL LEAVITT, DEBORAH LEAVITT, and CROW, CLOTHIER & BATES, a KANSAS CORPORATION
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DURAND DICKERSON
1514 10TH AVENUE
LEAVENWORTH, KANSAS 66048
(913)651-7397

QUESTIONS PRESENTED

1. Did the Tenth Circuit's decision that affirmed the United States's District Court, District of Kansas decision, that it lacked subject matter jurisdiction under the **Rooker-Feldman Doctrine** so far depart from the usual course of judicial proceedings?

2. Did the Tenth Circuit's decision that affirmed the United States's District Court, District of Kansas decision that it lacked subject matter jurisdiction under the **Rooker-Feldman Doctrine** and **inextricably intertwined** conflict with the decision of *Pennzoil Company v. Texaco, Inc.* 481 US 1 (1987) (Blackmon J. concurring)?

3. Is the decision of the District Court, District of Kansas, affirmed by the Tenth Circuit Court of Appeals judicially contrary to the holding in *Pennzoil*?

4. Is the Tenth Circuit jurisprudence contrary to this Court's decision on **inextricably intertwined**?

RULE 14.1(b) STATEMENT
LIST OF PARTIES

PETITIONER
DURAND DICKERSON

RESPONDENTS
G. RONALD BATES, JR.
PAUL LEAVITT
DEBORAH LEAVITT
CHARLENE BROWN
MICHAEL CROW
MARTHA BURNETT CROW
LOUIS CLOTHIER

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i
RULE 14.1 STATEMENT ii
TABLE OF CONTENTS iii
TABLE OF AUTHORITIES iv
OPINIONS BELOW 1
STATEMENT OF BASIC FOR JURISDICTION 1
CONSTITUTIONAL, STATUTORY
PROVISIONS INVOLVED 1
STATEMENT OF THE CASE 2
ARGUMENT 3
CONCLUSION 5

TABLE OF AUTHORITIES

SUPREME COURT CASES PAGE

District of Columbia Court of Appeals v. Feldman 460 US 462 (1983)........................... 3,4
Pennzoil v. Texaco, 481 US 1 (1987) .... i, 3, 4, 5
Rooker v. Fidelity Trust Co. 263 US 413, (1923) 3,4

U.S. COURT OF APPEALS CASES

Pittsburg County Rural Water District No. 7 v. City of McAlester 358 F3d, 694, 707 (10th Cir. 2003) 3

CONSTITUTION, STATUTES AND RULES

FIFTH AMENDMENT 1
FOURTEENTH AMENDMENT.. 1
18 U.S.C. 2 2
18 U.S.C. 371 2
18 U.S.C. 1341 2
18 U.S.C. 1342 2
18 U.S.C. 1343 2
18 U.S.C. 1344 2
18 U.S.C. 1346 2
18 U.S.C. 1961 *et seq.* 2
28 U.S.C. 1254(1) 1
28 U.S.C. 1331 2
28 U.S.C. 1391 2

BRIEF OF PETITIONER DURAND DICKERSON

OPINIONS BELOW

The Tenth Circuit Court of Appeals decisions (Appendix-A) affirmed the District Court of Kansas decision for dismissal of lack of subject matter jurisdiction under the **Rooker-Feldman Doctrine**.

The District Court's Memorandum and Order (Appendix-B) granting the defendants Motion to Dismiss under the **Rooker-Feldman Doctrine** as inextricably intertwined with petitioner's landlord-tenant dispute.

STATEMENT OF BASIS FOR JURISDICTION

The Tenth Circuit Court of Appeals decision (Appendix-A) was filed on July 7, 2004. Therefore this Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

The Fifth Amendment of the United States Constitution (Appendix-C) in pertinent part says "... nor be deprived of ..... or property, without due process of law."

The Fourteenth Amendment of the United States Constitution (Appendix D) in pertinent part Section-1 says "..... nor shall any state deprive any person of .... property without due process of law......".

STATEMENT OF THE CASE

Petitioner filed a complaint in the United States District Court of the District of Kansas under R.I.C.O. 18 U.S.C. 1961 *et seq,* 18 U.S.C. 2, 371, 1341, 1342, 1343, 1344, and 1346 with jurisdiction pursuant to 28 U.S.C. 1331 and venue pursuant to 28 U.S.C. 1391.

On July 23, 2003 petitioner filed his first amended complaint (Appendix-F).

On August 22, 2003 respondents G. Ronald Bates Jr., Deborah Leavitt, Paul Leavitt and Crow, Clothier & Bates filed a Motion to Dismiss (Appendix-G) raising **Rooker-Feldman Doctrine** and inextricably intertwined, (Appendix-G pages 11 and 12).

On August 26, 2003 respondent Charlene Brown filed a Motion to Dismiss alleging **Rooker-Feldman Doctrine** and inextricably intertwined (Appendix-H pages 7, 8, and 9).

On September 12, 2003 petitioner filed his Response to G. Ronald Bates Jr., Deborah Leavitt, Paul Leavitt, and Crow, Clothier, and Bates Motion to Dismiss (Appendix-I) wherein he argued that the **Rooker-Feldman Doctrine** does not apply, (Appendix-I pages 6,7,8, & 9).

On September 17, 2003 petitioner filed his response to Charlene Brown's Motion to Dismiss (Appendix-J) wherein he argued the **Rooker-Feldman Doctrine** (Appendix-J pages 4,5,6,7, and 8).

On October 22, 2003 the District Court of Kansas issued it's Memorandum and Order dismissing all the defendants for lack of subject matter jurisdiction under the **Rooker-Feldman Doctrine** (Appendix-B) and on the same date issued it's Judgment (Appendix-K).

On November 20, 2003 petitioner filed his Notice of Appeal (Appendix-L).

On January 10, 2004 petitioner filed his brief in the Tenth Circuit Court of Appeals (Appendix-M) wherein he argued the **Rooker-Feldman Doctrine** (Appendix-M pages 5, 6, 7, and 8).

ARGUMENT

This Court's decision in *Pennsoil*[1] states "..... despite the doctrine of *Rooker v. Fidelity Trust Co.* 263 US 413 (1923), and *District of Columbia Court of Appeals v. Feldman* 460 US 462 (1983), there was **no jurisdictional bar** to the Court's decision in the case, where the Court in resolving the New York company's challenge to the constitutionality of the Texas stay and lien provisions, did not need to decide any issue (a) **actually litigated in the Texas Courts** or (b) **inextricably intertwined with the issues so litigated."** (Emphasis added) stands in stark contrast to the Tenth Circuit Court of Appeals decision which states "...... In making this determination the District Court followed our well-established approach by asking "whether the state court judgment caused, actually and proximately, the injury for which [Mr. Dickerson] seeks redress" citing *City of McAlester*[2] and is judicially contrary to *Pennzoil.*

---

[1] *Pennzoil Co. v. Texaco, Inc.* 481 US 1 (1987)

[2] *Pittsburg County Rural Water District No 7 v. City of McAlester* 358 F3d 694, 707 (10th Cir. 2003)

In Blackmon J. concurring opinion in the judgment in *Pennzoil* stated "...... (1) a creditor's invocation of a states post-judgement collection procedures constituted action.... (3) collateral review **was not barred** by the principles announced in *District of Columbia Court of Appeals v. Feldman* and *Rooker v. Fidelity Trust Co*," (emphasis added) in so making this decision allows for petitioner to challenge the illegal collection process by the defendants (Appendix-F par. 102).

Petitioner has not asked in his R.I.C.O. action for the federal court to review a state judgment or review a matter decided by a state court. The fact is that the state court action was no longer even pending in this case.

Therefore, both the Supreme Court's jurisprudence and the factual context of this case compels a narrow reading of the "inextricably intertwined" test.

"Inextricably intertwined" jurisprudence is "{a} federal claim in inextricably intertwined with the state court judgment it the federal claim succeeds only to the extent that the state court **wrongly** decided the issues before it. Where federal relief can only be predicated upon a conviction that the **state court was wrong** (emphasis added), it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal to the state-court judgment" *Pennzoil @ 25.*

Post judgment procedural garnishment of petitioner's funds posted with the court, were fraught with fraud and violated petitioner's constitutional rights of due process, and any decision by the federal District Court in this issue under R.I.C.O. would not require a finging that the state court judgment was erroneous, regardless of whether the case was on appeal to the Kansas Court of Appeals.

CONCLUSION

The District Court was not asked to give any equitable relief that would interfere with the related state proceedings, in fact the defendants in live testimony (Appendix-F par. 133) admit to the alleged offenses and that it took place post judgment. For these reasons this writ should issue with instructions based upon this Court's decision in *Pennzoil.*

Respectfully submitted

Durand Dickerson

APPENDIX-A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

JUL 7 2004

PATRICK FISHER
Clerk

DURAND DICKERSON
Plaintiff-Appellant,

V.

No. 03-3341
(D. Ct. No. 03-CV-2337-JWL)
(D. Kan.)

G. RONALD BATES JR.;
CHARLENE BROWN; PAUL
LEAVITT; DEBORAH LEAVITT;
CROW, CLOTHIER & BATES
a Kansas Corporation,
Defendants-Appellees.

ORDER AND JUDGMENT

Before **TACHA**, Chief Circuit Judge, **BRISCO**, and **HARTZ**, Circuit Judges.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1 (G). The case is therefore ordered submitted without oral argument.

Plaintiff-Appellant Durand Dickerson appeals from the District Court's order dismissing his pro se complaint for lack of subject matter jurisdiction. We exercise jurisdiction pursuant to 28 U.S.C. 1291 and AFFIRM.

I. BACKGROUND

Mr. Dickerson's complaint alleges that the defendants violated the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961-1968, and defrauded him in obtaining and collecting various judgments entered against him in a landlord-tenant dispute in Kansas state courts. After a thorough analysis of Mr. Dickerson's claims, the District Court granted the defendants' motion to dismiss on the ground that the *Rooker-Feldman* doctrine barred the federal court from exercising subject matter jurisdiction.

II. DISCUSSION

"We review the district court's dismissal for lack of subject-matter jurisdiction de novo." *Kenmen Eng'g v. City of Union,* 314 F.3d 468, 473 (10th Cir. 2002) (citing *Johnson v. Rodrigues,* 226 F3d 1103, 1107 (10th Cir. 2000).

Under the *Rooker-Feldman* doctrine, lower federal courts lack jurisdiction to hear claims that are either (1) actually decided by a state court, *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 415-16 (1923), or (2) "inextricably intertwined" with prior state court judgment, *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482 n. 16 (1983). Flowing from the general rule that only the United States Supreme Court has federal appellate authority to review state court decisions, *Merrill Lynch Bus. Fin. Servs., Inc. Nudell,* 363 F3d 1072, 1074-75) (10th Cir. 2004) (citing 28 U.S.C. 1257(a)), the *Rooker-Feldman* doctrine prevents a lower federal court form conducting "'what in substance would be appellate review of [a] state judgment ..... based on a losing party's claim that the state judgment itself violates the loser's federal rights,"' *Kenmem,* 314 F3d at 473 (quoting *Johnson v. De. Grandy,* 512 U.S. 997, 1005-06 (1994).

Although a state court has not actually decided Mr. Dickerson's federal claims, the District Court applied the *Rooker-Feldman* doctrine here after finding his claims inextricably intertwined with prior state court judgments. In making this determination, the District Court followed our well-established approach by asking "' whether the state-court judgment caused, actually and proximately, the injury for which [Mr. Dickerson] seeks redress.'" *Pittsburg County Rural Water Dist. No 7 v. City of McAlester,* 358 F3d 694, 707 (10th Cir. 2004) (quoting *Kenmen,* 314 F3d at 476). Mr. Dickerson clearly seeks redress for losses resulting from the state judgments against him. For example, the seeks to be reimbursed for losses resulting form the garnishment of funds, posting of a bond, and payment of damage, all of which resulted from the state court decisions. Because the alleged injuries flow "actually and proximately" from the state court judgments, Mr. Dickerson's claims are inextricably intertwined with those judgments and the District Court lacks jurisdiction. *Id.*

In an attempt to avoid the *Rooker-Feldman* doctrine, Mr. Dickerson argues that the defendants, rather than the state court judgments, caused his injuries because the defendants defrauded him and engaged in criminal acts in obtaining and enforcing the judgments.[1] Although he asks us to believe otherwise, he is, in fact, asking a federal district court to undo state-court judgments and restore him to the position he was in before these judgments. *See Kenmen,* 314 F3d. at 477 (holding that the *Rooker-Feldman* doctrine barred a suit by plaintiffs seeking monetary relief that would restore them to the position they were in before the state-court judgments). We, therefore, agree with the District Court that his "attempt to reframe the issues is unavailing."

---

[1] Mr. Dickerson also argues that the *Rooker-Feldman* doctrine should not apply here because his complaint names defendants who were not parties in the state court proceedings. We have indeed said that the doctrine does not apply *against* non-parties. *See Johnson,* 226 F3d at 1109-10. Here, however, *Rooker-Feldman* is not being applied against the non-party defendants but against Mr. Dickerson, who was clearly a party to the state court proceedings. This argument, therefore, fails.

We also reject Mr. Dickerson's argument that the *Rooker-Feldman* doctrine does not apply because he is challenging post-judgment collection procedures rather that the actual judgments. *See Pennzoil Co. v. Texaco, Inc.,* 481 U.S. 1 (1987). But as this court has already noted, "under *Pennzoil,* a party may challenge state procedures for enforcement of a judgment, where consideration of the underlying state-court decision is not required." *Kenmen,* 314 F3d at 476. Here, such consideration is a necessity of the suit filed by Mr. Dickerson. In order to grant his requested relief, the District Court would have to consider the state court judgments and find them deficient, an effort that would clearly violate the *Rooker-Feldman* doctrine. *See id.* at 476 n.6 (noting that a district court would "upset" a state court judgment if it grant a damage award for "losses incurred as a result of complying with the state-court judgment").[2]

III. CONCLUSION

For there reasons, we AFFIRM the District Court's dismissal of the case on the ground that it lacks subject matter jurisdiction over Mr. Dickerson's claims. Finally, the Defendants filed an objection to Mr. Dickerson's docketing statement implying that his appeal was frivolous and apparently requesting costs and other relief. Because the Defendants failed to file a proper motion under Rule 38 of the Federal Rules of Appellate Procedure, we DENY their request for costs and other relief.

ENTERED FOR THE COURT
Deanell Reece Tacha, Chief Circuit Judge

---

[2] Because the court lacks jurisdiction over Mr. Dickerson's claims, we do not address Defendant Charlene Brown's alternative basis for dismissal or Mr. Dickerson's claim that one of the defense attorneys should be disqualified.

APPENDIX-B
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

Durand Dickerson
Plaintiff,

v. **Case No. 03-2337-JWL**

G. Ronald Bates, Jr.; Charlene Brown;
Paul Leavitt; Deborah Leavitt; Crow,
Clothier & Bates, a Kansas Corporation,
Defendants.

MEMORANDUM & ORDER

Plaintiff, appearing *pro se,* filed a multi-count complaint against defendants alleging that defendants violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. 1961 et seq., and committed fraud. This matter is presently before the court on defendants G. Ronald Bates, Paul Leavitt, Deborah Leavitt, and Crow, Clothier & Bates motion to dismiss (doc. #12) and defendant Charlene Browns motion to dismiss (doc. #16). As set forth below, the motions to dismiss are granted and plaintiff's complaint is dismissed in its entirety.

Factual Background

This case arises out of a landlord-tenant dispute between plaintiff Durand Dickerson and defendants Paul and Deborah Leavitt. In 1996, the Leavitts retained a lawyer, defendant G. Ronald Bates of the law firm Crow, Clothier & Bates, and filed suit against Mr. Dickerson seeking to have him evicted from the commercial property owned by the Leavitts. The Leavitts ultimately prevailed against Mr. Dickerson in state court. Mr. Dickerson appealed the district court's judgment to the Kansas Court of Appeals and the Kansas Court of Appeals thereafter dismissed Mr. Dickerson's appeal.

After Mr. Dickerson failed to filed an appropriate supersedeas bond and refused to vacate the leased premises, the Leavitt filed additional actions against him for recovery of damages due to his continuing default under the terms of the parties written lease agreement. These actions were apparently successful. The Leavitts also sought and obtained post judgment relief in the form of an execution and garnishment due to Mr. Dickerson's refusal to vacate the premises and otherwise satisfy the Leavitts' judgment. Mr. Dickerson appealed each of the judgments against him to the Kansas Court of Appeals and that court dismissed each of the appeals and granted, in part, the Leavitts' request for attorney fees.

In 1999, Mr. Dickerson filed a state court action against the Leavitts alleging that they had defrauded him. The Leavitts filed a motion to dismiss that action based on the doctrine of collateral estoppel and the judge granted the motion. Mr. Dickerson appealed that decision and the Kansas Court of Appeals affirmed the dismissal of the case. In the meantime, Mr. Dickerson filed another action against the Leavitts, this time in federal district court, alleging that the Leavitts and Mr. Bates, among others, had violated his constitutional rights. Judge O'Connor of this court dismissed Mr. Dickerson's complaint and the Tenth Circuit affirmed that decision.

Now, Mr. Dickerson has filed a RICO action against the Leavitts, Mr. Bates and his law firm, and Charlene Brown, the former clerk of the Leavenworth County District Court. In his complaint, he asserts that the defendants engaged in a pattern of racketeering activity from August 1996 through October 1999-activity which appears to consist largely of defendant's efforts to collect the judgments entered in favor of the Leavitts (including garnishing Mr. Dickerson's funds); to obtain an award of attorney fees from the Kansas Court of

Appeals; and to request that Mr. Dickerson post the requisite supersedeas bond. Mr. Dickerson also alleges that defendants made various false statements in the briefs they submitted to the Kansas Court of Appeals and that defendants fraudulently obtained the non-wage garnishment order that the state court issued.

Discussion

Defendants move the court to dismiss plaintiff's complaint on the grounds that the *Rooker-Feldman* doctrine bars the court from exercising subject matter jurisdiction over plaintiff's claims. *See District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.* , 263 U.S. 413, 414-16 (1923). It is beyond dispute that "*Rooker-Feldman* is a jurisdictional prohibition." *See Pittsburg County Rural Water Dist. No. 7 v. City of McAllester,* 2003 WL 22376980, ___ F.3d ___, ____, (10th Cir. October 17, 2003).[1]

Under 28 U.S.C. 1257, "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari." *Pittsburg County,* ___ F.3d at ____ . The negative inference from this statutory authorization is that

---

[1] Because the court determines that it does not have jurisdiction over plaintiff's claims, the court declines to address defendants' alternative bases for dismissal, except to note that defendant Charlene Brown, as she suggests, would be entitled to judicial immunity from plaintiff's claims and she would be entitled to dismissal of plaintiff's complaint on this basis. Each of the allegations in plaintiff's first amended complaint concerning Ms. Brown focus on activities that Ms. Brown engaged in as the district court clerk in Leavenworth County, Kansas, including mailing copies of various orders to Mr. Dickerson. As such, she in immune from suit. *See Whitesel v. Sengenberger,* 222 F.3d 861, 867 (10th Cir. 2000)(absolute judicial immunity extends to persons other than a judge where performance of judicial acts or activity as an official aid of the judge is involved and where the non-judicial officer's duties had an integral relationship with the judicial process); *see also Wiggins v. New Mexico State Supreme Court Clerk,* 664 F.2d 812, 815 (10th Cir. 1981)(state court clerk absolutely immune from suit because "no court can discharge its judicial duties without the aid of clerks, servants and agents").

"federal review of state court judgments can be obtained only in the United States Supreme Court." *Id.* (quoting *Kenmen,* 314 F.3d at 473). Thus, *Rooker-Feldman* precludes "a party losing in state court ..... from seeking what in substance would be appellate review of [a] state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Id.* (quoting *Kenman,* 314 F.3d at 473).

The Supreme Court has applied the *Rooker-Feldman* jurisdictional bar to two categories of claims-claims that are actually decided by a state court, *Rooker v. Fidelity trust Co.,* 263 U.S. 413, 415-16 (1923), and claims that are 'inextricably intertwined" with prior state court judgment, *see Dist. Of Columbia Ct. of App. V. Feldman,* 460 U.S. 462, 482 n. 16 (1983). *Id.* It is readily apparent that plaintiff's claims for relief based on violations of RICO were not actually decided by the Kansas courts. Thus, the court must resolve whether plaintiff's federal court claims are "inextricably intertwined" with the Kansas state court's judgment. *See id.* In applying the "inextricably intertwined" standard, the court asks "whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." *Id.* (quoting *Kenman,* 314 F.3d at 476). Stated another way, the court asks whether "the state-court judgment caused, actually and proximately, the injury for which the federal-court plaintiff seeks redress." *Id.* (quoting *Kenman,* 314 F.3d at 476. If it did, *Rooker-Feldman* deprives the federal court of jurisdiction; if it did not, *Rooker-Feldman* provides no bar. *Id.*

Using these principles as a guide, the court is convinced that it does not have jurisdiction over plaintiff's claims. After a careful reading of plaintiff's complaint, affording him the liberality given to all pro se litigants, the court concludes that each of plaintiff's claims is inextricably intertwined with the state court's judgments against him and in favor of the

Leavitts; thus, under *Rooker-Feldman*, those claims may not be reviewed by this court. Plainly, the true purpose in filing his federal complaint is to redress plaintiff's dissatisfaction with the outcome of the state court proceedings. In his complaint, for example, plaintiff complains about the losses he has suffered as a result of having his funds garnished, having to post a bond, and having to pay the Leavitts damage for lost rent. He complains about the Leavitts' efforts to obtain an award of attorney fees. In his prayer for relief, he seeks reimbursement for these amounts, including the "loss of bond money" and the loss of his garnished funds. These claims, then, are inextricable intertwined with the state court proceedings. *See Kenmen,* 314 F.3d at 476 n.6 (federal court upsets a state court judgment, and violates *Rooker-Feldman,* when it awards damages for losses incurred as a result of complying with state court judgment); *Doop v. Loring,* 2002 WL 31839852, at *1 (10th Cir. Dec. 19, 2002) (to extent plaintiff alleged illegal activity under RICO for actions taken pursuant to state court rulings, federal district court correctly concluded that its jurisdiction was barred by *Rooker-Feldman* doctrine).

Plaintiff also suggests in his complaint that the defendants obtained the judgment against him (including the award of attorney fees and the garnishment order) through fraud and improper means. As the Tenth Circuit has noted, however:

> [t]he proper remedy for a state court litigant's dissatisfaction with a state court judgment, however, is not a suit in federal court; instead, litigants must seek review of a state court judgment through the state appellate process. Then, if still dissatisfied, they may seek review in the United States Supreme Court.

Ellis v. CAC Financial Corp., 2001 WL 289943, at *3 (10th Cir. Mar. 26, 2001). Thus, even where, as here, the plaintiff does not expressly seek to overturn the state court judgment, but complains instead about the procedures used to obtain that judgment, it is impossible for the federal court to resolve such claims without calling into question the state court judgment and violating *Rooker-Feldman*. *Id.* Clearly, this court cannot resolve plaintiff's claim that the garnishment order was obtained through fraud without essentially reviewing the order itself. Similarly, the court cannot resolve plaintiff's claim that the Leavitts obtained an award of attorney fees through improper means without calling into question that award. *See Barnett v. State of Colorado,* 2003 WL 22321478, at *2 (10th Cir. Oct. 10, 2003) (federal court plaintiff's challenge to award of attorney's fees against him in state court was inextricably intertwined with state court judgment).

In his brief in response to the motion to dismiss, plaintiff urges that his claims fall outside the ambit of *Rooker-Feldman.* He states, for example, that he was injured not by the state court judgments but by the defendants' "criminal acts" in obtaining and enforcing those judgments and that he is not seeking relief from the judgments but from the "criminal wrongs committed by the defendants." Plaintiff's attempt to reframe the issues is unavailing. The fact remains that plaintiff, in his federal court complaint, seeks monetary damages attributable to losses he sustained as a result of having to post a bond, having to pay a portion of defendants' attorneys' fees, and having his funds garnished-all pursuant to a state court order. But for the state court judgments, then, plaintiff would have suffered no injury. Thus, he is essentially seeking an "undoing" of the state court judgments and he cannot do so here in federal court. *See Kenmen,* 314 F.3d at 477 (federal court cannot place a plaintiff back in the position he occupied prior to a state court judgment).[2]

---

[2] Plaintiff also urges that *Rooker-Feldman* has no application to this case because his RICO claims were not raised in the state court proceedings and could not have been raised because much of the conduct he complains about occurred after the judgments were entered. Of course the fact that his claims were not actually raised in the state court proceedings has no bearing on the application of *Rooker-Feldman.*

Despite his protests to the contrary, it is clear that plaintiff's injury resulted from the state court judgments, that his complaint in federal court seeks only to upset that judgment, ant that the resolution of his federal claims necessarily requires consideration of the underlying state court decision. *See Kenmen,* 314 F.3d at 476. As Judge O'Connor of this court noted with respect to Mr. Dickerson's civil rights claims against these defendants, the court "cannot envision how plaintiff could obtain any relief based on his federal claims without a factual finding that the state court judgments entered against plaintiff were erroneous." *See Dickerson v. Leavitt Rentals,* 995 F. Supp. 1242, 1246 (D. Kan.) *aff'd,* 153 F.3d 726 (10th Cir. 1998) (affirming district court and further noting that Mr. Dickerson's claims were "patently frivolous"). Accordingly, the court grants defendants' motion to dismiss plaintiff's complaint for lack of subject matter jurisdiction.

IT IS THEREFORE ORDERED BY THE COURT THAT defendants G. Ronald Bates, Paul Leavitt, Deborah Leavitt, and Crow, Clothier & Bates' motion to dismiss (doc. #12) is **granted** and defendant Charlene Brown's motion to dismiss (doc. #16) is **granted.** Plaintiffs' first amended complaint is dismissed in its entirety.

IT IS SO ORDERED.

Dated this 22nd day of October, 2003, at Kansas City Kansas.

s/John W. Lungstrum
John W. Lungstrum
United States District Judge

APPENDIX-C

U.S. CONSTITUTION: FIFTH AMENDMENT

Fifth Amendment-Rights of Person

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal cases to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX-D

U.S. CONSTITUTION: FOURTEENTH AMENDMENT

SECTION 1. All person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

APPENDIX-F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DURAND DICKERSON)
Plaintiff)

vs.)
CASE NO. 03-2337 J W L
)
)
G. RONALD BATES, ATTORNEY AT LAW)
CHARLENE BROWN,)
PAUL LEAVITT)
DEBORAH LEAVITT)
CROW, CLOTHIER, AND BATES,)
A KANSAS CORPORATION)

PLAINTIFF'S FIRST AMENDED COMPLAINT

I
JURISDICTION

1. Durand Dickerson, (hereinafter Plaintiff) is a citizen of the State of Kansas, and the defendants are citizens of the State of Kansas, and some have principle place of business in the State of Kansas.

2. Jurisdiction of this Court is found on the existence of a question raised under 18 United States Code 1961 *et seq,* The Organized Crime Control Act of 1970, Public Law 91-452 section 901(a) 84 stat. 941, as it hereinafter more fully appears, and 28 U.S.C. 1331; 18 U.S.C. 371, 18 U.S.C. 1341, 1342, 1343, 1344, and 1346; 18 U.S.C. 2(a) and (b); K.S.A. 60-701 *et seq.*; K.S.A. 33-101 *et seq.*; and K.S.A. 21-3701 *et seq.*

3. Subject matter jurisdiction is vested concurrently in the United States District Courts and in States Courts, 18 U.S.C. 1964(c).[1]

4. R.I.C.O. does not invalidate or supersede Kansas State laws, and R.I.C.O. remedies actually complement Kansas laws, and does not frustrate state regulation or state laws[2].

5. Personal jurisdiction over the defendants is determined by the reference herein to the state law of Kansas cited above.[3]

6. Plaintiff is aware of the split among the Circuit and District Courts concerning jurisdiction of governmental agencies and officers, and Plaintiff is also aware that the Tenth Circuit and the Kansas District Courts has made no decision on jurisdiction. However pursuant to *McNally v. United States* US 350 (1987), this Court has jurisdiction over the governmental agencies and officers defendants.

7. "Abstention From Jurisdiction" is not appropriate in this cause as there is no "Parallel Duplicative" State proceeding that could or would exist.[4] Further "Abstention From Jurisdiction" is not appropriate as the Defendants cannot meet the "Burford Abstention Test.[5]

8. Plaintiff has authority pursuant to the Federal Rules of Civil Procedure to amend his complaint prior to the defendants being served. None of the defendants have been served as of the date of the filing of this First Amended Complaint.

---

[1] *Tafflin v. Levitt* 493 US 455 (1990)
Fox v. Maulding 16 F.3d 1079 (10th Cir. (1994)
Starlight International Inc v. Herlihy, 13 Fed Supp. 2d 1178 (D. Kan. 1998)

[2] *Humana Inc. v. Forsythe*, 142 Led. 2d 753 (1999).

[3] *Serras v. First Tennessee Bank National Association* 875 F.2d 1212 (6th Cir. 1989)
F.M.C. Corp. v. Varonos 892 F2d 1308 (7th Cir. 1990)

[4] *McLaughlin v. United Virginia Bank*, 955 F2d 930, 935 (4th Cir. 1992)

[5] *Burford v. Sun Oil* 319 US 315 (1943)
- *New Orleans Public Service Inc. v. New Orleans* 491 US 350 (1989)
Colorado River Water Conservation District v. United States 424 US 800 (1976)

II
VENUE

9. Civil R.I.C.O. actions may be brought in the United States District Court for any district in which a defendant resides, is found has an agent, or transacts business. This Court has venue pursuant to 28 USC 1391(b).[6]

10. Venue is proper in this Court pursuant to 18 USC 1965(a) and (b), and is broader than the general venue statue at 28 USC 1391(b).[7]

III
INTERSTATE COMMERCE

11. Defendant Crow, Clothier and Bates is engaged in interstate commerce by representation of clients from without the state of Kansas, and the practice of law outside the state of Kansas.

12. Defendant Charlene Brown, as the clerk of the District Court for the County of Leavenworth, Kansas, files papers on behalf of persons throughout the United States, especially suits on behalf of military personnel.

13. Defendant Paul Leavitt and Deborah Leavitt buy and sell used equipment throughout the United States, owns or owned an aluminum recycling can center in Rushville, Missouri. Defendant Paul and Deborah Leavitt owns or have owned a recycling center in Leavenworth, Kansas that deals with persons or business from outside of the state of Kansas.

14. Defendant G.Ronald Bates, in the practice of law represents persons or companies that affect interstate commerce and practices law outside of the state of Kansas.

15. The convexity to interstate commerce under R.I.C.O. is minimal,[8] as such the operation and the activities of the

---

[6] *Farmers Bank of Delaware v. Bell Mortgage Corp.* 452 Fed Supp. 1278 (D. Del. 1978)

[7] *King v. Vesco* 342 Fed Supp. 120 (N.D. Cal 1972)
Wichita Federal Savings and Loan Association v. Landmark Group Inc. 674 Fed Supp. 321 (D. Kan. 1987)

[8] *Cowan v. Corley* 814 F2d 223 (5th Cir. 1987)

association-in-fact is sufficiently related to interstate commerce.

IV

PARTIES

16. Durand Dickerson (hereinafter "Plaintiff") is a citizen of the State of Kansas.

17. G. Ronald Bates Jr., Attorney at Law, (hereinafter (BATES") is an attorney engaged in the practice of law and so licensed by the State of Kansas during the period covered by this complaint, and is a citizen of the State of Kansas.

18. Charlene Brown, court clerk, (hereinafter "CLERK") is a clerk of the Leavenworth County District Court, and was during the period covered by this complaint, and is a citizen of the State of Kansas.

19. Crow, Clothier, and Bates, (hereinafter "CCB") is a law firm, corporation so licensed by the State of Kansas during the period covered by this complaint.

20. Paul Leavitt, (hereinafter "PAUL") is a citizen of the State of Kansas.

21. Deborah Leavitt, (hereinafter "DEBORAH") is a citizen of the State of Kansas.

V

CO-CONSPIRATORS

22. Various persons, firms, and corporations not named as defendants, participated as co-conspirators in the **enterprise** and acts listed herein, and made statements in furtherance thereof.

VI

STATEMENT OF THE NATURE OF THE R.I.C.O. CLAIMS

(A)

DEFINITIONS

23. Whenever in this complaint, reference is made to any act, deed or transaction of any corporation, such allegation shall be deemed to mean that said corporation engaged in such act, deed or transaction by or through it's officers, directors, agents, employees, representatives while they were actively engaged in the management, direction, control or transactions of it's business or affairs.

24. **Enterprise** is defined in 1961(4), as any individual, partnership, corporation, association or other legal entity, and any union, or group of individual's associated-in-fact though not a legal entity.[9]

25. **Association-in-fact** is defined as corporations, as well as individual persons, or between individuals and business entities.[10]

26. **Enterprise: Acquisition or control of** can be shown by an acquired interest in or control of, for the purpose of manipulating Court cases, or acquiring funds from the Plaintiff through this manipulation.[11]

27. **Culpable Person** and the R.I.C.O. enterprise may be individual, and is not required to be separate from the enterprise.[12]

28. **Pattern of Racketeering** is defined as two or more acts of racketeering, one of which occurred after the passage of the R.I.C.O. Act in 1970, which shows relationship plus continuity.

29. **Pattern of Racketeering Continuity** is facts that show a threat of continued criminal conduct and extends to other persons activities.[13]

30. **Pattern of Racketeering Single Scheme** can be a pattern of racketeering.[14]

---

[9] *United States v. Turkette* 452 US 576, 583 (1981)

[10] *UNA Plus Inc. v. Apria Health Care Group Inc.* 29 Fed Supp. 2nd 1253 (D. Kan. 1998)

[11] *Sunbird Air Services Inc. v. Beech Aircraft Corp.* 789 Fed Supp. 364 (D. Kan. 1992)

[12] *Garbade v. Great Divide Mining and Milling Corp.* 831 F2d 212 (10th Cir. 1987)

[13] *Boone v. Carlsbad Ban Corporation Inc.* 972 F2d 1545 (10th Cir. 1996)

31. **Pattern of Racketeering Number of Victims** is alleging that others have been similarly victimized.[15]

32. **Pattern of Racketeering Relationship of Acts** is shown by proving at least two related acts that amount to or threaten long-term predicate activity. Relationship means acts that have the same or similar purpose, results, participants, victims, or method of commission.[16]

33. **Prohibited Activities** is defined as a violation of one or more activities defined in 18 USC 1962(a)(b)(c) and (d).

34. **Investment in an Enterprise with Racketeering Income** is defined as a classical money laundering scenario in which funds that are earned through the commission of acts of racketeering are invested in an enterprise, in an apparently lawful manner. One good example of an 18 USC 1962 (a) violation comes not from the Courts, but from the pen of author Mario Puzo in his modern day classic novel and movie "*The Godfather*". Vito Corleone violated 18 USC 1962 (a) by using funds derived from various racketeering activities to gain an interest in a legitimate olive oil company.[17]

35. **Vicarious Liability** is defined as when an individual or entity benefited by it's employees or agents R.I.C.O. violation, and is properly liable for the racketeering activity of it's employees or others acting on it's behalf.

36. **Conducting an Enterprise Through Racketeering** is defined as illegal for any person associated with or employed by an enterprise engaged in interstate or foreign commerce to actually conduct or participate in the affairs of the enterprise through a pattern of racketeering activity.[18]

---

[14] *H.J. Inc. v. Northwestern Bell Telephone* 492 US 229 (1989)

[15] *Miller v. Moffat County State Bank* 678 Fed Supp. 247 (D. Colo. 1988)

[16] *H.J. Inc. v. Northwestern Bell Telephone* 492 US 229 (1989)

[17] *Gutierrez v. Givens* 1 Fed Supp. 2nd 1077 (S.D. Colo. 1998)

[18] *Reese v. Ernest and Young* 113 Supreme Court 1163 (1993)

37. **Conspiracy** is defined as a conspiracy to violate 1962(a), (b), or (c) and is distinct from a conspiracy to commit a predicate offense[19]

38. **Aiding and Abetting Liability** is defined as association, participation in activity as something he wishes to bring about, sought through his actions to make it succeed[20]

39. **Predicate Offence** is defined as a violation of a state or federal statue whether criminal or civil.

40. **Governmental Agencies/Officers** is the intangible right of the citizenry to good and honest government.[21]

41. **Injury Causation** is injury proximately caused by conduct constituting the violations.[22]

42. **Intent** is the willfulness standard.[23]

43. **Lawyers as Parties** is a law firm and it's partners can be vicariously and substantively liable for a scheme under R.I.C.O. of mail fraud, conspiracy, intangible right to honest service, wire fraud, and 18 USC 1001.[24]

VII

FACTUAL NARRATIVE

(1)

PREFACE: OUTLINE OF A PATTERN OF RACKETEERING ACTIVITY

---

[19] *United States v. Silva* 118 Sup. Ct. 469 (1997)

[20] *National Electric Benefit Fund v. Henrey Bros.* 931 Fed. Supp. 169 (N.D. NY 1995)

[21] *McNally v. United States* 483 US 350 (1987)

[22] *Holmes v. Securities Investor Protection Corp.* 503 US 258 (1992)
Peterson v. Shanus 149 F3d 1140 (10th Cir. 1998)
UNA Plus, Inc. v. Apria Health Care Group Inc. 29 Fed Supp. 2d 1253 (D. Kan. 1998)

[23] *Friedlob v. Trustees of Alpine Mutual Fund Trust* 905 Fed Supp. 843 (D. Colo. 1995)

[24] *Crowe v. Henry* 43 F3d 198 (5th Cir. 1995)
Appleby v. West 832 F2d 1021 (7th Cir. 1987)
Handeen v. LeMaire 112 F3d 1339 (8th Cir. 1997)

44. The RICO Statue defines a pattern of racketeering activity as two or more acts of racketeering, one of which occurred after the passage of the RICO Act and within ten years of the date of the other act of racketeering.

45. This pattern started in August 1996 and continued through October 1999. This is not a trivial routine case, the conduct set forth herein was over a three (3) year period of time, involved private and public officials, officers of the Court, and others. The fact is this is a normal day to day operation by the individuals as confirmed in testimony.[25]

46. Dickerson has outlined in this Complaint seven (7) instances of false statements, seven (7) instances of deprivation of honest service, two (2) instances of money laundering, two (2) different conspiracies, theft of property, deprivation of property, that all of the injuries were distinct and that this is a large and complex scheme.

(2)
THE ENTERPRISE

47. The enterprise concept is not required to be legitimate enterprises[26] an association-in-fact is listed as a basic type of enterprise under RICO.[27] The association-in-fact here is G. Ronald Bates Jr., Paul Leavitt, Deborah Leavitt, Crow, Clothier, and Bates, and Charlene Brown, was and is an ongoing organization in which they function as a continuing unit and all depended on each other to further the scheme.

(3)
GOVERNMENT OFFICERS

---

[25] *Resolution Trust Corp. v. Stone, 998 F2d 1534 (10th Cir. 1993)*

[26] United States v. Turkette 452 US 576 (1981)

[27] *UNA Plus Inc. v. Apria Healthcare Group Inc. 29 F.Supp 2nd 1253, (D. Kan. 1998)*

48. Dickerson has set forth seven (7) predicated acts pursuant to 18 U.S.C. 1346 that is the intangible right to good and honest government.[28]

(4)

INJURY

49. Dickerson was injured by the loss of funds $20,000.00 approximately that could have been used to operate his business. Because of the deprivation of these funds Dickerson business failed[29] and Plaintiff loss $4,880,000 in business and the use of the funds.

(5)

CULPABLE PERSON

50. A person liable under RICO is on who maintains an interest in or participates in the affairs of an enterprise. Pursuant to 18 U.S.C. 1962 (a) (b) and (c) Dickerson has showed the enterprise is an association-in-fact and that G. Ronald Bates Jr., Crow, Clothier and Bates, Paul Leavitt, Deborah Leavitt, and Charlene Brown are the culpable persons.[30]

51. A law firm can be culpable for acts of mail fraud, wire fraud, money laundering, and state fraud for acts in representation of clients, if the acts assisted in the scheme to defraud,[31] so named is Crow, Clothier, and Bates, all acts were done during the representation of the Leavitts, and in conspiracy with others known and unknown to Dickerson.

(6)

CULPABLE PERSON V. ENTERPRISE

---

[28] *McNally v. United States,* 483 US 350 (1987)

[29] *Peterson v. Shanks 149 F3d 1140, (10th Cir. 1998)*

[30] *Garbade v. Great Divide Mining and Milling Corp. 831 F2d 212 (10th Cir. 1987)*

RTC v. Stone 988 F. 2nd 1553 (10th Cir. 1993)

[31] *Crowe v. Smith* 856 F. Supp 1178 (W.D. La. 1994)

52. Dickerson has shown that the enterprise is an association-in-fact made up of G. Ronald Bates, Crow, Clothier and Bates, Paul Leavitt, Deborah Leavitt, and Charlene Brown.

53. This enterprise has an identity separate and apart from that of the individual defendants.[32]

the fact is the enterprise association-in-fact operates apart and separate from the culpable person and its' only purpose is to violate the law.

(7)
LAWYERS AS PARTIES

54. Dickerson has charged defendant G. Ronald Bates Jr. whom is a lawyer and Crow, Clothier, and Bates whom is a legal corporation with being culpable persons, and members of an association-in-fact enterprise, and participated in the scheme to defraud Dickerson.

(8)
CONSPIRACY

55. The nature of the conspiracies as set forth herein were that the defendants G. Ronald Bates Jr., Paul Leavitt, Deborah Leavitt, Crow, Clothier, and Bates, and Charlene Brown, agreed to commit violation of 18 U.S.C. 1341, 1343, 1346, 18 U.S.C. 1956, and 1957, 18 U.S.C. 1001, 18 U.S.C. 1503 and K.S.A. 33-106, K.S.A. 21-3705, K.S.A. 21-3711, K.S.A. 21-3701. In each Count herein Dickerson has shown with particularity the role of each defendant[33] and that they had an agreement to engage in the pattern of racketeering, and that Dickerson was injured from the conspiracies.

(9)
AIDING AND ABETTING

---

[32] *RTC v. Stone* 998 F2d 1553, (10th Cir. 1993)

[33] *Midwest Grinding Co. v. Spitz* 716 F. Supp. 1087 (N.D. Ill. 1989)

56. The defendants, G. Ronald Bates Jr., Paul Leavitt, Deborah Leavitt, Crow, Clothier, and Bates, and Charlene Brown, aided and abetted each other in the scheme of mail fraud, wire fraud, intangible right of honest services, money laundering, false statements, and conspiracy to commit prohibited enterprise activities to bring about these schemes, as- sociated themselves for such purpose and sought through their actions to make it succeed. The defendants G. Ronald Bates Jr., Paul Leavitt, Deborah Leavitt, Crow, Clothier, and Bates, and Charlene Brown, took part in directing the affairs of the enterprise and had a role in covering up the RICO scheme.

(10)

TREBLE DAMAGES

57. The compensable injury of denying Dickerson the use of his funds, and the ensuring loss of his business, caused by the mail fraud, wire fraud, intangible right to honest service, money laundering, false statement, and conspiracy which were predicate acts, that sufficiently relate to a pattern, in connection with the operation of the enterprise which is cause for awarding of treble damages as punitive punishment,[34] therefore since it is penal in nature it is not subject to reduction as duplicative, and the Supreme Court has acknowledged what is punitive and remedial.[35]

VIII

PREDICATE ACTS COUNT ONE: MAIL FRAUD RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS 18 U.S.C. 1961 AND 18 U.S.C. 1341

---

[34] *Sedima SPRL v. Imrex Co.* 473 US 479 (1985)
Summers v. FDIC 592 F. Supp. 1240 (W.D. Okla. 1984)

[35] *Pacific Health Care Systems Inc. v. Book, et al* U.S. Sup. Ct. April 7, 2003

58. The preceding paragraphs are incorporated herein as if fully set forth at length.

59. This complaint alleges that all the Defendants have violated the Racketeer Influenced and Corrupt Organization Act (RICO).

60. The Defendants have an interest and have maintained an interest, or previously had an interest in the association-in-fact. The Defendants have held such interests through their position as either public officials, business owners or citizens.

61. The activities of the association-in-fact [enterprise] have a significant affect on interstate commerce.

62. The Defendants have utilized the [enterprise] to engage in racketeering acts, in violation of RICO.

63. The Defendants have committed more than two predicate criminal acts which include Count-1 mail fraud, as pled herein, which constitute a pattern of behavior in violation of RICO. The actions of the Defendants were at all times outrageous, and committed with bad motive and/or reckless indifference to the rights of the Plaintiff. The Plaintiff has been damaged in his business and property by the acts of the [enterprise] which includes the Defendants.

MAIL FRAUD PREDICATE

64. The Plaintiff alleges that the Defendants through the [enterprise] have violated the laws of the United States and the State of Kansas for the intent of promoting their purpose and [enterprise] in violations of RICO. Such criminal violations of mail fraud are detailed herein.

65. The Defendants have violated 18 USC 1341 mail fraud

to wit:

To devise a scheme and artifice to defraud and to obtain money from the Plaintiff by means of false and fraudulent pretenses, promises, and representation, through material misrepresentation and in execution thereof, caused the use of the United States mail.

66. On or about September 27, 1999, the Defendants "BATES", "PAUL", "DEBORAH", "CCB", and "CLERK" aided and abetted by each other for the purpose of executing and carrying out a scheme and artifice to defraud, and to obtain money from Plaintiff, by false and fraudulent pretenses, representations with material misrepresentations did knowingly and willfully cause mail matter to wit, an envelope containing a proposed journal entry in 9704-LC-474. This was in violation of K.S.A. 60-701 *et. seq.* and K.S.A. 33-101 *et.seq*, 18 USC 1341 and 1346.

67. On or about July 1, 1999, the Defendants "BATES", "PAUL", "DEBORAH", "CLERK", and "CCB" aided and abetted by each other for the purpose of executing and carrying out a scheme and artifice to defraud, and to obtain money from Plaintiff, by false and fraudulent pretenses, representations, with material misrepresentation; mailed to the Leavenworth CountyCourthouse a judgment calculation in case no. 9704-LC-474 for collection of $3,600.00 of which had already been collected on April 1, 1997, in violation of K.S.A. 60-701 *et.seq.* and K.S.A.33-101 *et. seq*, 18 USC 1341 and 1346.

68. On or about May 1, 1998 "BATES", "PAUL", "DEBORAH", "CCB", and "CLERK", aided and abetted by each other for the purpose of executing and carrying out a scheme and artifice to defraud, and to obtain money from Plaintiff, by false and fraudulent pretenses, representations, with material misrepresentation, did knowingly and willfully cause mail matter, to wit, an envelope with a motion to the Court of Appeals of the State of Kansas in Case no. 9704-LC-474 for attorneys fees knowing there was no bond money posted in 9704-LC-474.

69. On or about April 2, 1998, "BATES", "PAUL", "CCB" and "DEBORAH" aided and abetted by each other for the purpose of executing and carrying out a scheme and artifice to defraud, and to obtain money from the Plaintiff, by false and fraudulent pretenses, representation, with material

misrepresentation, did knowingly and willfully cause mail matter, to wit, an envelope with a Court of Appeals brief, case no. 96-77822-A, that on page 7 conceded that it was a void judgment in case no. 9608-LC-698 and that there was not a lease.

70. On or about March 19, 1998, "BATES", "CCB", "PAUL", "DEBORAH", and "CLERK", aided and abetted by each other for the purpose of executing and carrying out a scheme and artifice to defraud, and to obtain money from the Plaintiff, by false and fraudulent pretenses, representation, with material misrepresentation, did knowingly and willfully cause mail matter, to wit, an envelope with an addition to the record of a non-existent lease to the Court of Appeals.

71. On or about August 18, 1997, "BATES", "CCB", "PAUL", "DEBORAH", and "CLERK", aided and abetted by each other, for the purpose of execution and carrying out a scheme and artifice to defraud, and to obtain money from the Plaintiff, by false and fraudulent pretenses, representation with material misrepresentation, did knowingly and willfully cause mail matter, to wit, an envelope containing a garnishment of funds totaling $402.63 in case no. 9704-LC-474 without notifying Plaintiff in violation of K.S.A. 60-701 *et.seq.* and K.S.A. 33-101 *et.seq*, 18 USC 1341 and 1346.

72. On or about April 1, 1997 "BATES", "PAUL" , "DEBORAH", "CCB" aided and abetted each other, for the purpose of executing and carrying out a scheme and artifice to defraud, and to obtain money from the Plaintiff, by false and fraudulent pretenses, representations, with material misrepresentations, did knowingly and willfully cause mail matter, to wit, an envelope with a letter to Plaintiff that the defendants "PAUL" and "DEBORAH" were keeping Plaintiffs' $3,000.00 knowing that on July 1, 1999 they would collect the same $3,000.00 again from the Plaintiff, in violation of 18 U.S.C. 1341,1346, K.S.A. 60-701 *et seq.* and K.S.A. 33-101 *et seq.*

73. On or about September, 20, 1996, "BATES", "PAUL", "DEBORAH", "CLERK", and "CCB" aided and abetted by each other, for the purpose of executing and carrying out a

scheme and artifice to defraud, and to obtain money from Plaintiff, by false and fraudulent pretense, representations, with material misrepresentations, did knowingly and willfully cause mail matter, to wit, an envelope with a letter to Plaintiff to post a $6,000.00 supersedeas bond in case n. 9608-LC-698 when they knew that on April 2, 1998 they would admit that 9608-LC-698 was a void judgment without jurisdiction, in violation of K.S.A. 33-101 *et.seq*, and 18 USC 1341 and 1346.

74. On or about September 16, 1996, "BATES", "CCB" "PAUL", "DEBORAH", and "CLERK", aided and abetted by each other, for the purpose of executing and carrying out a scheme and artifice to defraud, and to obtain money from the Plaintiff, by false and fraudulent pretenses, representations, with material misrepresentations, did knowingly and willfully cause mail matter, to wit, an envelope with Itemized Attorney Fees, for case no. 9608-LC-698 knowing that case no. 9608-LC-698 was a void judgment without jurisdiction, in violation of K.S.A. 33-101 *et.seq*, and 18 U.S.C. 1341, 1346.

75. All the listed mail fraud counts have established that the use of the mails were an essential part of the scheme to cheat Plaintiff, and that others relied on the fraudulent mailings, which lulled others into a false sense of security, and that over a three year period were a scheme and artifice to defraud Plaintiff of money, by all the defendants.

76. All of the listed mail fraud counts established an "association-in-fact" of G. Ronald Bates, Paul Leavitt, Deborah Leavitt, Charlene Brown, "Crow, Clothier, and Bates" which is an [enterprise], that is ongoing, and did not have a single short term goal.

COUNT TWO

CONSPIRACY: 18 U.S.C. 371, 1341, 1343, 1346, and K.S.A. 21-3302

THE ALLEGATIONS OF PARAGHAPH 58 THROUGH 76 ARE RE-ALLEGED AS IF FULLY SET FORTH HERE

77. On or about and between at least July 1996 and October 1999, both dates being approximate and inclusive, within the District of Kansas, and elsewhere, the defendants "BATES", "CCB","PAUL", "DEBORAH" "CLERK" and others knowingly and intentionally conspired to devise a scheme and artifice to defraud, including to deprive "PLAINTIFF" of his right to honest services, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice would transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce in violation of 18 U.S.C. 1343, and by causing the use of the mails for the purpose of executing such scheme and artifice in violation of 18 U.S.C. 1341,1346
and K.S.A. 21-3302.

78. It was part of the scheme that the defendants' "BATES", "PAUL", "DEBORAH", "CLERK", "CCB" and others took advantage of their control over the Judicial System to enrich themselves and others, including family members, friends and clients.

OVERT ACTS

79. In furtherance of the conspiracy to effect the objects thereof, within the District of Kansas and elsewhere, the defendants, "BATES", "PAUL", "DEBORAH", "CLERK", "CCB" and others did commit and cause to be committed the following overt acts, among others:

80. On or about July 1, 1999, the District Clerk paid to G. Ronald Bates Jr. $3,600.00 without a Court Order or a garnishment to do so.

81. On or about July 1, 1999, G. Ronald Bates Jr., Crow, Clothier and Bates, Paul and Deborah Leavitt exchanged checks concerning the $3,600.00.

82. On or about August 18, 1997, Crow, Clothier and Bates, G. Ronald Bates Jr. and Charlene Brown directed by mail an answer garnishment.

83. On or about March 18, 1998, Crow, Clothier and Bates, G. Ronald Bates Jr. sent by mail an "Addition To The Record" of a non-existent lease.

84. On or about July 1, 1999, Crow, Clothier, and Bates deposited $3,600.00 in their account.

85. On or about October 1, 1997, Charlene Brown mailed an "Order For Payment Of Garnishment" to G. Ronald Bates Jr. at "Crow, Clothier, and Bates".

86. On or about May 1, 1998, Charlene Brown mailed an "Order For Payment Of Garnishment" to G. Ronald Bates Jr. at "Crow, Clothier and Bates".

87. On or about March 18, 1999, Charlene Brown mailed an "Answer On Garnishment" to G. Ronald Bates Jr. at "Crow, Clothier and Bates".

88. On or about July 1, 1999 Charlene Brown mailed to G. Ronald Bates Jr. at "Crow, Clothier and Bates" an "Order For Payment Of Garnishment".

89. On September 20, 1996 G. Ronald Bates Jr. caused Patrick Henderson to mail a letter requesting $6,000.00 supersedeas bond to Durand Dickerson.

90. On or about October 23, 1999 Charlene Brown mailed an order denying Dickersons' "Motion to Retrieve Bonds, Security Deposit, and Bank Garnishment Funds".

ADDITIONAL OVERT ACTS

91. Dickerson re-alleges all the allegations in Count-1 paragraph 58 through Count –2 paragraph 90 as additional overt acts.

COUNT THREE

CONSPIRACY TO COMMITT PROHIBITED ENTERPRISE ACTIVITIES 18 U.S.C. 1962(d)

92. All the defendants "BATES", "PAUL", "DEBORAH", "CCB" and "CLERK" comprise an association-in-fact enterprise.

93. The defendants "BATES", "PAUL", "DEBORAH", "CCB", and "CLERK" have agreed to participated in the affairs of the enterprise through the commission of two or more predicate acts to wit:

94. The allegations of paragraphs 58 through 93 are re-alleged as if fully set forth here:

95. That is the defendants "BATES", "CCB", "PAUL", "DEBORAH", and "CLERK" adopted the goals of furthering and facilitating the objectives of the conspiracy, and they all knew it was a conspiracy to violate RICO.

96. All the defendants "BATES", "CCB", "PAUL", "DEBORAH", and "CLERK" agreed to commit: mail fraud 18 U.S.C. 1341, wire fraud 18 U.S.C. 1343, money laundering 18 U.S.C. 1956 et seq. and 18 U.S.C. 1957, deprivation of honest services 18 U.S.C. 1346, false statement 18 U.S.C. 1001, fraud K.S.A. 33-106, deprivation of property K.S.A. 21-3705, making false information K.S.A. 21-3711, and theft K.S.A. 21-3701(a) (1)(2)(3) and (b)(2).

ADDITIONAL OVERT ACTS

97. Dickerson re-alleges all the allegations in Count-1 paragraph 58 through Count-3 paragraph 96 as additional overt acts.

COUNT FOUR

MONEY LAUNDERING: 18 U.S.C. 1956 AND 1957

98. The allegations in Count-1 paragraphs 58 through Count-3 paragraph 97 are re-alleged as if fully set forth here.

99. From on or about July 1996 to October 1999 in the District of Kansas and elsewhere, the defendants "BATES", "CCB", "PAUL", "DEBORAH", "CLERK" and others did knowingly and intentionally conduct and attempt to conduct financial transactions affecting interstate commerce which transactions involved the proceeds of specified unlawful activities, that is mail fraud 18 U.S.C. 1341, wire fraud 18 U.S.C. 1343, deprivation of honest service 18 U.S.C. 1346, false statement 18 U.S.C. 1001, fraud K.S.A. 33-106, deprivation of property K.S.A. 21-3705, making false information K.S.A. 21-3711, and theft K.S.A. 21-3701 (a)(1) (2)(3) and (b)(2) knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of the specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of 18 U.S.C. 1956 (a) (1)(A)(ii) and 18 U.S.C. 1956 (a)(1)(B)(i).

100. To engage and attempt to engage in monetary transactions by, through or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than $10,000.00, that is the deposit, withdrawal, or transfer of funds, such property having been derived from a specified unlawful activity, that is, mail fraud 18 U.S.C. 1341, wire fraud 18 U.S.C. 1343, deprivation of honest service 18 U.S.C. 1346, false statement 18 U.S.C. 1001, fraud K.S.A. 33-106, deprivation of property K.S.A. 21-3705, making false information K.S.A. 21-3711, and theft K.S.A. 21-3701(a)(1)(2)(3) and (b)(2).

OVERT ACTS

101. Within the District of Kansas and elsewhere defendants "BATES", "CCB" "PAUL", "DEBORAH",

"CLERK" and others did commit and cause to be committed the following overt acts among others:

102. On or about July 1, 1999 the defendants "BATES", "PAUL", "DEBORAH", "CLERK" and others purported to take by garnishment $3,600.00 supersedeas bond money in order to conceal the nature of the payment of: Attorneys' fees and other fees to defendant Crow, Clothier and Bates, and transferring the funds among themselves to disguise the source of the funds.

ADDITIONAL OVERT ACTS

103. Dickerson re-alleges all the allegations in Count-1 paragraph 58 through Count-4 paragraph 102 as additional overt acts.

COUNT FIVE

FALSE STATEMENT: 18 U.S.C. 1001, and K.S.A. 21-3711

104. The allegations in Count-1 paragraph 58 through Count-4 paragraph 103 are re-alleged as if fully set forth here.

105. On or about July 1996 through October 1999 in the District of Kansas and elsewhere the defendants "BATES", "CCB" "PAUL", "DEBORAH", "CLERK", and others knowingly and willfully made and caused to be made false and fictitious material statements and representations in that:

106. "BATES" and "CCB", in an appellate court brief stated that "prior supersedeas bonds were posted to cover future lost rent.

107. "BATES" and "CCB" in an appellate court brief stated that "the actions was for enforcement of lease terms.

108. "BATES", "PAUL", and "DEBORAH" told the defendant "CLERK" to release $4,259.25 and that there was authority to do so.

109. "BATES" and "CCB" on July I, 1999 signed an affidavit for attorney fees that had already been paid.

110. "BATES", "CCB", "PAUL", and "DEBORAH" filed a purported non-wage garnishment on or about January 27, 1999.

111. On September 17, 1999 defendant "CLERK" testified that "BATES", "PAUL", and "DEBORAH" took $3,600.00.

112. On March 18, 1999 "CLERK" filed a purported non-wage garnishment.

113. They falsely represented that such documents and testimony were true, when in fact the defendants "BATES", "CCB", "PAUL", "DEBORAH", "CLERK" and others knew that the documents were misleading, incomplete and unlawful.

ADDITIONAL OVERT ACTS

114. Dickerson re-alleges all the allegations in Count-1 paragraph 58 through Count-5 paragraph 113 as additional overt acts.

COUNT SIX

DEPRIVATION OF HONEST SERVICES: 18 U.S.C. 1346

115. The allegations of Count-1 paragraph 58 through Count-5 paragraph 114 are re-alleged as if fully set forth here.

116. On or about and between at least July 1996 and October 1999, both dates being approximate and inclusive, within the District of Kansas and elsewhere, the defendants "BATES", "CCB", "PAUL", "DEBORAH", "CLERK" and others devised a scheme and artifice by materially false and misleading statements to deprive Plaintiff of the intangible right of honest services by:

117. Testifying on September 17, 1999 that “BATES”, without authority had “CLERK” issue money payable to “PAUL” and “DEBORAH”, in violation of 18 U.S.C. 1001, made false statements to “CLERK” in violation of 18 U.S.C. 1346.

118. On July 1, 1999 “CLERK” provided to “BATES”, “PAUL”, “DEBORAH”, and “CCB” $3,600.00 without authority to do so, pursuant to 18 U.S.C. 1346.

119. On March 18, 1999 “CLERK” mailed an answer to “BATES”, “CCB”, “PAUL, and “DEBORAH” about a garnishment and failed to follow statutory procedure, in violation of 18 U.S.C. 1341 and 1346.

120. On July 1, 1999 “CLERK” mailed an “Order For Payment OF Garnishment” to “BATES”, “CCB”, “PAUL” and “DEBORAH” without following statutory procedures in violation of 18 U.S.C. 1341 and 1346.

121. On May 1, 1998 “CLERK” mailed an “Order For Payment Of Garnishment” to “BATES”, “CCB”, “PAUL” and “DEBORAH” without following statutory procedures in violation of 18 U.S.C. 1341 and 1346.

122. On August 19, 1997 “CLERK” mailed a garnishment answer to “BATES”, “CCB”, “PAUL” and “DEBORAH” without following statutory procedures in violation of 18 U.S.C. 1341 and 1346.

123. On April 21, 1997 “CLERK” mailed a garnishment answer to “BATES”, “CCB”, “PAUL” and “DEBORAH” without following statutory procedures in violation of 18 U.S.C. 1341 and 1346.

ADDITIONAL OVERT ACTS

124. Dickerson re-alleges all the allegations in Count-1 paragraph 58 through Count-6 paragraph 123 as additional overt acts.

COUNT SEVEN
FRAUD: K.S.A. 33-101 ET SEQ.

125. The allegations of Count-1 paragraph 58 through Count-6 paragraph 124 are re-alleged as if fully set forth here.

126. On or about July 1996 and between October 1999 both dates being approximate and inclusive, within the District of Kansas and elsewhere the defendants "BATES", "PAUL", "DEBORAH", "CLERK", "CCB" and others knowingly and intentionally made a material misrepresentations of material fact, knowing the representations were false, for the purpose of inducing others to act upon them, and other parties relied upon the misrepresentations and Dickerson sustained damages, in violation of 18 U.S.C. 1341, 1346 and K.S.A. 33-101 *et seq.*

OVERT ACTS

127. On or about January 13, 1999 an "Order For Non-Wage Garnishment" was acquired through false and fraudulent pretenses and without statutory authority was given to the Sheriff in violation of 18 U.S.C. 1346.

128. On or about January 27, 1999 an "Order For Non-Wage Garnishment" was acquired through false and fraudulent pretenses and without statutory authority was given to the Sheriff in violation of 18 U.S.C. 1346.

129. On March 18, 1999 a "Non-Wage Garnishment Answer" was filed under false and fraudulent pretenses, without statutory authority by "CLERK".

130. On July 1, 1999 a "Garnishment" that was acquired through false and fraudulent pretenses was given to "CLERK", asking for $3,600.00 in violation of 18 U.S.C. 1346.

131. On July 1, 1999 "BATES", "PAUL" and "DEBORAH" filed an affidavit stating facts that were material misrepresentations to acquire a garnishment

through false and fraudulent misrepresentations in violation of 18 U.S.C. 1341, 1346, and 1001.

132. On September 17, 1999 "BATES" and "CCB" testified that they acquired garnishments through false and fraudulent misrepresentations in violation of 18 U.S.C. 1001, 18 U.S.C. 1346, 18 U.S.C. 1956, and 1957.

133. On September 19,1999 "BATES" in testimony admitted that a bond of $4,259.25 was acquired through material misrepresentations and that "PAUL" and "DEBORAH" aided and abetted the false misrepresentations.

134. All the false and fraudulent misrepresentations were committed pursuant to state statue K.S.A. 60-701 *et seq*.

ADDITIONAL OVERT ACTS

135. Dickerson re-alleges all the allegations in Count-1 paragraph 58 through Count-7 paragraph 134 as additional overt acts.

COUNT EIGHT

MAKING FALSE INFORMATION: K.S.A. 21-3711

136. The allegations of Count-1 paragraph 58 through Count-7 paragraph 135 are re-alleged as if fully set forth here.

137. On or about and between at least July 1996 and October 1999, both dates being approximate and inclusive, within the District of Kansas and elsewhere, the defendants "BATES", "CCB", "PAUL", "DEBORAH", "CLERK", and other, knowingly, willfully, and intentionally with material misrepresentations, make false statement to wit:

138. On July 1, 1999 "BATES" signed an affidavit for fees that had already been paid in violation of 18 U.S.C. 1346, 18 U.S.C. 1001, 18 U.S.C. 1956 and 18 U.S.C. 1957.

139. On or about July 1, 1999, "BATES", "PAUL", and "DEBORAH" told defendant "CLERK" to release the

$3,600.00 to pay for fee other than rent in violation of 18 U.S.C. 1001, 18 U.S.C. 1346, 18 U.S.C. 1956 and 1957.

140. On September 17, 1999. testified that "BATES", "PAUL", and "DEBORAH" took $3,600.00 for purpose other than rent in violation of 18 U.S.C. 1001.

141. "BATES" and "CCB" filed purported garnishment without the statutory procedure to do so, and advising the defendant "CLERK" not to follow statutory procedure in violation of 18 U.S.C. 1001 and 18 U.S.C. 1346.

142. "BATES" and "CCB" falsely represented to a Court that the procedures had been followed knowing that the procedures had not been followed, and in fact inserted themselves in the process by making false information in violation of 18 U.S.C. 1346 and 18 U.S.C.1001.

ADDITION OVERT ACTS

143. Dickerson re-alleges all the allegations in Count-1 paragraph 58 through Count-8 paragraph 142 as additional overt acts.

DAMAGES ALLEGATIONS

144. Upon conviction of one or more of the offenses alleged in this complaint, the defendants G. Ronald Bates Jr., Paul Leavitt, Deborah Leavitt, Charlene Brown, and the Law Firm of "Crow, Clothier and Bates", pursuant to 18 U.S.C. 1964(a)(c) a treble damage remedy is provided for any person injured in his business or property by virtue of a 18 U.S.C. 1962 violation. compensable injury is necessarily the harm caused by predicate acts...[36] for both direct and indirect injuries, and is punitive.[37]

145. The defendants, G. Ronald Bates Jr., Paul Leavitt, Deborah Leavitt, Charlene Brown, and Crow, Clothier, and Bates shall pay all right, title, and interest in any and

---

[36] _Sedima S.P.R.L. v. Imrex Co_. 473 US 479 (1985)

[37] _Summers v. FDIC 582_ F. Supp 1240 (W.D. Okla. 1984)

all property involved in each offense in violation of 18 U.S.C. 1956 and 18 U.S.C. 1957, or conspiracy to commit such offenses, and all property traceable to such property including treble damages in violation of 18 U.S.C. 371.

146. The loss of Dickerson Recycling Business, including treble damages.

147. The loss of bond money and treble damages.

148. The loss of future income and treble damages.

149. The loss of State of Kansas grant funds and treble damages.

150. The total of all of these losses and treble damages exceeds $5,000,000.00.

151. Plaintiff is demanding a trial by jury at the United States District Courthouse for the District of Kansas, 500 State Avenue, Kansas City, Kansas, 66101.

____

Durand Dickerson
P.O. Box 572
Leavenworth, Kansas 66048
(913)351-2919

APPENDIX -G
UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

DURAND DICKERSON,
Plaintiff,
v **Case No. 03-2337-JWL**
G. RONALD BATES,
CHARLENE BROWN,
PAUL LEAVITT,
DEBORAH LEAVITT,
CROW, CLOTHIER & BATES,
A KANSAS CORPORATION,
Defendants.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OF DEFENDANTS G. RONALD BATES, CHARLENE LEAVITT, PAUL LEAVITT, AND CROW, CLOTHIER & BATES

Defendants G. Ronald Bates (Bates), Paul Leavitt and Deborah Leavitt (Leavitt), and Crow, Clothier & Bates, a Kansas law firm (CCB), submit the following memorandum brief of arguments and authorities in support of their Motion to Dismiss.

I. NATURE OF THE MATTER BEFORE THE COURT

Durand Dickerson's Complaint alleges a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968. Defendants Bates, Leavitt and CCB move, pursuant to Federal Rules of Civil Procedure 12 (b)(6), to dismiss the Complaint for failure to state a claim upon which relief can be granted.

II. STATEMENT OF THE FACTS

This complaint arises from a landlord-tenant dispute between Plaintiff Durand K. Dickerson

(Dickerson) and Defendants Paul and Deborah Leavitt over the lease of certain commercial realty located in Leavenworth, Kansas. In connection with the dispute, the Leavitts retained Defendant Bates, a Leavenworth attorney, and his law firm, Defendant CCB, to represent them in an action against Dickerson for rents and possession. The Leavitts prevailed against Dickerson in the resulting state court litigation and thereafter Dickerson appealed from the adverse judgment to the Kansas Court of Appeals. Because Dickerson failed to file an appropriate supersedeas bond and because Dickerson remained in possession of the leased premises, Bates subsequently filed on the Leavitts' behalf new actions against Dickerson for recovery of damages due to his continuing default under the terms of the parties' written lease agreement. Further, the Leavitts sought and obtained available post judgment relief (e.g. execution and garnishment) due to Dickerson's refusal to vacate the premises and otherwise satisfy the Leavitts' judgment.

The Kansas Court of Appeals dismissed four appeals filed by Dickerson on the state district court cases on December 24,1998 and granted attorney fees amounting to $2500 to the Leavitts, CCB and Bates. Dickerson filed a motion for rehearing, which was denied by the Kansas Court of Appeals on February 5, 1999, and then a petition for review with the Kansas Supreme Court, which was denied on March 16, 1999.

On February 19, 1999, Dickerson filed an action against the Leavitts and Leavitt Rentals, their business, in Leavenworth County District Court, alleging that they had defrauded him. The Leavitts filed a motion to dismiss on the basis that collateral estoppel; the facts alleged to support the claim had already been litigated in the four earlier cases and appeals. The state district court granted a dismissal May 12, 1999. On June 7, 1999, Dickerson appealed to the Kansas Court of Appeals, which affirmed the dismissal of Dickerson's case on July 7, 2000. Dickerson again appealed for review by the Kansas Supreme Court, which denied his petition for review on November 7, 2000.

Meanwhile, Dickerson also filed a claim, Case No. 97-2584-EEO, in the United States District Court for the District of Kansas on December 1, 1997, based upon 42 U.S.C. §1983, 1985, 1986, 1988 and the 4th, 5th, and 14th Amendments to the United States Constitution. His basis for jurisdiction was a federal question and he named in his Complaint the Leavitts, Bates and CCB as well as most of the individuals involved in the landlord tenant case in state court, Leavitt Rentals, Leavenworth County District Court Judges Hon. Philip Lacey and Hon. David King, the Leavenworth County Board of County Commissioners, the Leavenworth County Sheriff and deputies, and other county employees and private lawyers and law firms. The lawsuit sought $37,500,000.00 in damages and claimed that the defendants conspired to deprive Dickerson of his property and right to due process.

On February 11, 1998, The federal district court dismissed Dickerson's case on two grounds. Under the Rooker-Feldman Doctrine, the court found that federal district courts lack subject matter jurisdiction to hear a case which in substance would be appellate review of the state judgment in federal court. The court found that "plaintiff's federal claims are 'inextricably intertwined' with the state court judgments entered by the Leavenworth County District Court.The court also dismissed the claims specifically against Bates, the Leavitts and CCB for failure to state a claim under the federal statutes cited. *See* Dickerson v. Leavitt Rentals, 995 F.Supp. 1242 (1998).

Dickerson filed a Notice of Appeal to the Tenth Circuit Court of Appeals later in February 1998. On June 17, 1998, the Court of Appeals affirmed the dismissal of Dickerson's federal lawsuit and found that the federal district court "did not err in any respect." *See* Dickerson v. Leavitt Rentals, 153 F.3d 726 (10th Cir.1998). The judge also stated, "Indeed, we find Mr. Dickerson's claims and his arguments patently frivolous. On February 11, 1998, Dickerson filed a Petition for Writ of Certiorari to the United States Supreme Court, which was denied on January 19, 1999. *See* Dickerson v. Leavitt Rentals, 153 F.3d 726 (10th Cir.(Kan. Jun 17, 1998) (Westlaw, No. 98-3053), cert.den. 525 U.S. 1110, 119 S.Ct. 882, 142 L.Ed.2d 781, 67 USLW 3458 (1999) (Westlaw No. 98-6899).

On July 23, 2003, Dickerson filed a new federal action against Bates, the Leavitts, CCB, and Charlene Brown, formerly a clerk of the Leavenworth County District Court. He again cites as a basis for jurisdiction, federal question and states that his cause of action is pursuant to the Racketeer Influenced and Corrupt Organizations Act (RICO).18 U.S.C. §§ 1961-1968. His Complaint concerns an alleged pattern of racketeering activity by the Defendants from August 1996 through October 1999, which appears to involve the supersedeas bond, attorney fees and other matters concerning the enforcement of the lease terms and recovery of lost rent in the tate and federal cases previously filed and dismissed.

III. STATEMENT OF THE QUESTIONS PRESENTED

1. Whether service on Defendant CCB was and is improper and invalid since plaintiff has failed to comply with Rule 4 of the Federal Rules of Civil Procedure.

2. Is Plaintiff's cause of action barred by the doctrines of res judicata and collateral estoppel?

3. Is Plaintiff's cause of action barred by the Rooker-Feldman doctrine?

4. Whether Plaintiff's Complaint states a cause of action against the Defendants under the Racketeer Influenced and Corrupt Organizations Act (RICO).18 U.S.C. §§ 1961-1968?

IV. ARGUMENT AND AUTHORITY

A. Plaintiff has failed to comply with Rule 4 of the Federal Rules of Civil Procedure and service of process on Defendant CCB was and is improper and invalid.

The Plaintiff's cause of action should be dismissed or, alternatively, service of summons upon Defendant CCB should be quashed. Crow, Clothier & Bates is a partnership. Rule 4 (h) requires that service of process on a partnership be affected by "delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant." RCFP Rule 4(h).

Dickerson or his agent did not deliver a copy of the summons and Complaint to a partner or agent authorized by statue or otherwise authorized to receive service of process on behalf of Crow, Clothier & Bates. The summons and complaint were handed to the receptionist in the law office, Jessica Lambert. *See* Affidavit of Jessica Lambert, attached hereto as Exhibit A.

Plaintiff's Complaint should be dismissed against Defendant CCB for failure to or, in the alternative, service of process on CCB should be quashed and set aside. Defendant CCB questions the court's jurisdiction over CCB in this matter on the grounds of insufficiency of service of process.

B. Plaintiff's cause of action barred by the doctrines of res judicata and collateral estoppel.

The term "res judicata" refers to a matter adjudged, decided, and settled by judgment. The doctrine of res judicata is judicially created, having for its purpose the repose of controversies once they have been decided on their merits and the end to litigation. It has been said by many courts in many cases that the doctrine is as follows: an existing final judgment rendered on the merits without fraud or collusion, by a court of competent jurisdiction, is conclusive of causes of action and of facts or issues litigated, as to the parties and their privies, in all other actions before courts of the same or concurrent jurisdiction. Am. Jur. 2d, Judgments § 514 *et seq.*

The previous cases of Plaintiff and Defendants cited above bind the parties to this proceeding and are res judicata, thereby precluding a subsequent judicial proceeding between the same parties regarding the matters litigated in the previous actions. Res judicata bars relitigation not only of matters determined in a previous adjudication but also matters that Plaintiff Dickerson could have raised in the state or federal cases he previously filed. In addition, when the identical parties are before the court, res judicata applies to any issues which were previously litigated. Res judicata must be pleaded as an affirmative defense, and the failure to so plead constitutes a waiver. Defendants plead res judicata as an affirmative defense and as a valid reason to require dismissal of Plaintiff Dickerson's claim.

Res judicata is not a mere matter of practice or procedure inherited from a more technical time, but a rule of fundamental and substantial justice, of public policy and private peace, which should be enforced by the courts to the end that rights, once established by the final judgment of a court of competent jurisdiction, must be recognized by those who are bound by it in every way, wherever the judgment is entitled to respect.

The doctrine of res judicata is a manifestation of the recognition that endless litigation leads to confusion or chaos. The doctrine reflects the refusal of the law to tolerate a multiplicity of, or needless, litigation and is based on the premise that the interest of the proper administration of justice is best served by limiting parties to one fair trail of an issue or cause. It rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigated, or had an opportunity to litigate, the same matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent. These tenets are especially true in this case.

A final judgment on the merits, rendered by a court of competent jurisdiction, is conclusive as to the rights of the parties and their privies, and as to them constitutes an absolute bar to a subsequent action involving the same claim, demand, and cause of action, whether the plaintiff fails to recover in the first action, or is successful in recovering a part of his claim. *See* Lawlor v. National Screen Service Co., 349 U.S. 322, 75 S.Ct. 865 (1955), United States v. International Bldg. Co., 345 U.S. 978, 73 S.Ct. 1120 (1953). The judgment puts an end to the cause of action, which cause cannot again be brought into litigation between the parties upon any ground, or for any purpose whatever, in the absence of some factor invalidating the judgment. Commissioner of Internal Revenue v. Sunnen, 333 U.S. 591, 68 S.Ct. 715 (1948). In such case, the res which is judicata is the cause of action.

Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision acts to preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. *See* Allen v. McCurry, 449 U.S. 90, 94, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980). The fact that the Plaintiff has asserted additional claims in this latest case is of no importance if the new claims are based on the underlying issue already decided in the prior case. Matosantos Comm'l Corp. v. Applebee's Int'l, Inc., 245 F.3d 1203, 1208 (10th Cir.2001).

The matters on which Plaintiff Dickerson bases his Complaint were previously tried and adjudicated in actions in the state of Kansas in Leavenworth County District Court in cases No. 9608LC00686, No. 9608LC00698, No. 9702LC00190, 9612LC01284, and No. 9902CV000686; in the Kansas Court of Appeals in cases No. 96-77822-A (consolidated cases No. 9608LC00698, No. 9702LC00190, 9612LC01284), No. 96-79561-A (No. 9608LC00686), and No. 99-83451-AS (No. 9902CV000686). *See* Leavitt v. Dickerson, 975 P.2d 279 (Kan.App. Dec. 24, 1998) (TABLE, NO. 77,822, 78,686, 78,993), *review denied* (Mar 16, 1999); Dickerson v. Leavitt, 4 P.3d 1190 (Kan.App. Jul 07, 2000) (TABLE, NO. 83451), *review denied* (Nov 07, 2000). Plaintiff's Petitions for Review in the above named cases to the Kansas Supreme Court were denied. Final and valid judgments were made and entered in such actions adverse to Plaintiff Dickerson and in favor of Defendants Leavitt, Bates and CCB. Copies of the Kansas Court of Appeals decisions are attached hereto as Exhibit B, C, and D and are incorporated by this reference.

The matters on which Plaintiff Dickerson bases his Complaint were also previously tried and adjudicated in actions in the United States District Court for the District of Kansas in case No. 97-2584-EEO. *See* Dickerson v. Leavitt Rentals, 995 F.Supp. 1242, 1247 (D.Kan.1998), *aff'd.* 153 F.3d 726 (10th Cir.1998), *cert. denied*, 525 U.S. 1110, 119 S.Ct. 882, 142 L.Ed.2d 781 (1999). The dismissal of Plaintiff Dickerson's complaint by the United States District Court for the District of Kansas was upheld by the Tenth Circuit Court of Appeals and his petition for review by the United States Supreme Court was denied. A final and valid judgment was made and entered in such action adverse to Plaintiff and in favor of Defendants Leavitt, Bates and CCB.

The opposing litigants in the above named prior actions were the identical persons who are parties to the instant action, and the matters litigated in the prior action were the same matters at issue in the instant action. The judgment in the prior actions remain in full force and effect. An exemplified copy of those judgments are attached hereto, marked Exhibits E and F and is incorporated by this reference.

Defendants are entitled to a dismissal of Plaintiffs Complaint on the grounds of collateral estoppel and res judicata. The United States Supreme Court has found that "[w]hen an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." Ashe v. Swenson, 397 U.S. 436, 443, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970). In the Tenth Circuit, application of collateral estoppel applies when it is determined that: "(1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party, or in privity with a party, to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action." Dodge v. Cotter Corp., 203 F.3d 1190, 1197 (10th Cir.2000).

Plaintiff's Complaint states that his claims concern activity by the Defendants in August 10 1996 through October 1999, the period when the Defendants were involved in the commercial landlord tenant dispute and resulting litigation between Plaintiff Dickerson and the Defendants that was the subject matter of the above named cases. *See* Plaintiff's Complaint, paragraph 45, page 7. Plaintiff refers to the previous state cases in his Complaint, stating that the Defendant's "aided and abetted by each other" in mailing "an envelope containing a proposed journal entry in [Case. No.] 9704-LC-474. *See* Plaintiff's Complaint, paragraph 66. Plaintiff is clearly trying to retry the Kansas cases in this new case. He alludes to "a judgment calculation in case no. 9704-LC-474" in paragraph 67, "an envelope with a motion to the Court of Appeals of the State of Kansas in Case No. 9704-LC-474 for attorneys fees" in paragraph 68; "an envelope with a Court of Appeals brief, case no. 96-77822-A" in paragraph 69; "an envelope with an addition to the record of a non-existent lease to the Court of Appeals in paragraph 70."

Although Plaintiff's pleadings are extremely vague and difficult to understand, there is no issue raised in Plaintiff's Complaint that does not concern the Kansas cases or the federal case previously adjudicated. Once a court, or in this case several state and federal courts have decided issues of law and fact in a dispute between litigants, the doctrines of collateral estoppel and res judicata preclude a lawsuit utilizing a different cause of action and again forcing the defendants or plaintiffs in the previous case to litigate the issues all over again. *See* Allen v. McCurry, 449 U.S. 90, 94, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980); Baez-Cruz, 140 F.3d at 30; Restatement (Second) of Judgments § 27 (1980). All the claims pleaded in Plaintiff's Complaint are based on the underlying issue decided in the Leavenworth County

District Court, the landlord tenant dispute between Dickerson as tenant and the Leavitts as landlord. Bates and CCB are named as defendants by Plaintiff in their capacities as attorneys in the landlord tenant 11 and subsequest cases and appeals on that matter.

Plaintiff is clearly trying to use the RICO act to relitigate matters which were subject to final judgment in the favor of Defendants in numerous previous cases at the state and federal level. For instance, in paragraphs 74 of his Complaint, Plaintiff states that " 9608-LC-698 was a void judgment without jurisdiction," an issue that was settled to the contrary by the Kansas Court of Appeals and upheld by the Kansas Supreme Court. Plaintiff states in paragraph 69 of his Complaint that "there was not a lease" and in paragraph 70 he refers to "a non-existent lease." The landlord-tenant issues were fully litigated in the Leavenworth County District Court cases and cannot be relitigated in a RICO case here. The Plaintiff's Complaint, with close scrutiny, reveals that the prior cases involved the same allegations and issues that Plaintiff Dickerson raises in this case. Because all of the elements necessary to apply the collateral estoppel doctrine are present, the dismissal of Plaintiffs Complaint is proper and necessary.

C. Plaintiff's cause of action is barred by the Rooker-Feldman doctrine.

Federal courts are courts of limited jurisdiction. Dickerson, as plaintiff, bears the burden of establishing that the federal district court has subject matter jurisdiction of his claims. *See* Henry v. Office of Thrift Supervision, 43 F.3d 507, 512 (10th Cir.

1994); Miller v. United States, 710 F.2d 656, 662 (10th Cir.), *cert. denied*, 464 U.S. 939 (1983).

Plaintiff lost all of the cases filed by Plaintiff and by Defendants in the state landlord tenant matter. For the second time, Plaintiff is filing a case in federal district court trying to relitigate the matters already decided in state court and affirmed at all of the Kansas appellate levels. The Rooker-Feldman doctrine "bars a party losing in state court from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." Kiowa Indian Tribe v. Hoover, 150 F.3d 1163, 1169 (10th Cir.1998). Thus, Rooker-Feldman bars cases in federal court that are "inextricably intertwined" with a prior state court judgment. *Id.* Here, Defendants assert that Plaintiff Dickerson's suit would in substance constitute appellate review of the state court judgments entered in favor of Bates, CCB and the Leavitts prior to Dickerson's filing of this suit against the Defendants. *See* Kenmen Eng'g v. City of Union, 314 F.3d 468, 473 (10th Cir.2002) (citing Rooker v. Fid. Trust Co., 263 U.S. 413, 415-16, 44 S.Ct. 149, 68 L.Ed. 362 (1923); Dist. of Columbia Ct. of App. v. Feldman, 460 U.S. 462, 483 n. 16, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983)).

In fact, the United States District Court for the District of Kansas, in Case No. 97-2584-EEO, a previous case filed by Plaintiff against these named Defendants, as well as numerous other county and judicial officials, applied the Rooker-Feldman doctrine to conclude that subject matter jurisdiction was not present as to all the defendants, including Bates, the Leavitts and CCB. The Court stated, "We cannot envision how plaintiff could obtain any relief based on his federal claim without a factual finding that the state court judgments entered against plaintiff were erroneous." Dickerson v. Leavitt Rentals, 995 F.Supp. 1242, 1247 (D.Kan.1998), *aff'd.* 153 F.3d 726 (10th Cir.1998), *cert. denied*, 525 U.S. 1110, 119 S.Ct. 882, 142 L.Ed.2d 781 (1999)(attached hereto as Exhibit __.

Plaintiff Dickerson's complaint should be dismissed on the grounds that subject matter jurisdiction is not present as to all defendants named above.

D. Plaintiff's Complaint fails to state a cause of action against the Defendants under Racketeer Influenced and Corrupt Organizations Act (RICO).18 U.S.C. §§ 1961-1968.

A court may dismiss a complaint for failure to state a claim upon which relief can be granted. *See* Fed.R.Civ.P. 12(b)(6). The court need accept as true only the plaintiff's wellpleaded factual contentions, not his conclusory allegations. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Complaints drawn by pro se litigants are held to a less stringent standard than those drafted by legal counsel. Id. Nevertheless, a pro se complaint may be dismissed if it clearly fails to state a legally cognizable claim. Id.

Plaintiff cites Racketeer Influenced and Corrupt Organizations Act (RICO).18 U.S.C. §§ 1961-1968, as the grounds for jurisdiction and the basis of his latest claim against the Defendants in a landlord tenant matter which is now several years old. Plaintiff's RICO claims fail to adequately allege a pattern of racketeering activity. The statute requires at least two acts of racketeering activity, and, "while two acts are necessary, they may not be sufficient." Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 n. 14, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). Because the allegations in Plaintiff's Complaint are obscure and include absolutely no details about the timing and nature of the predicate acts, it is impossible to tell from the pleading whether there were two acts, what those two acts were, or if they were sufficiently related and continuous as to constitute a pattern.

To successfully state a RICO claim, a plaintiff must allege four elements: "(1) conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity." Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 496, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985); Robbins v. Wilkie, 300 F.3d 1208, (10th Cir. 2002); BancOklahoma Mortgage Corp. v. Capital Title Co. Inc., 194 F.3d 1089, 1100 (10th Cir.1999).

Plaintiff may be attempting to plead some sort of fraud. The Federal Rules of require particularity in pleading fraud. *See, e.g.*, Farlow v. Peat, Marwick, Mitchell & Co., 956 F.2d 982, 989-90 (10th Cir.1992) (predicate acts of mail fraud require heightened pleading pursuant to Rule 9(b)); Cayman Exploration Corp. v. United Gas Pipe Line Co., 873 F.2d 1357, 1362 (10th Cir.1989) (Rule 9(b) requires particularity in pleading the predicate RICO acts of mail and wire fraud). Plaintiff's pleadings are far from particular; his Complaint is vague, indefinite, and very difficult to understand.

While plaintiffs' pro se pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers, Plaintiff must nonetheless set forth sufficient facts to support his RICO claim. *See* Diaz v. Paul J. Kennedy Law Firm, 289 F.3d 671, 674, RICO Bus.Disp.Guide

(10th Cir. 2002); Hall v. Bellmon, 935 F.2d 1106, 1110-12 (10th Cir.1991).

The facts as alleged by plaintiff simply do not constitute mail fraud. Plaintiff's claim rests on the allegation the Defendants had something to do with documents that were sent through the mail. Mail fraud is not committed, however, simply by sending false statements through the mail. Instead, the mails must have been used to further a scheme to defraud or obtain money or property through false pretenses. *See* Dirt Hogs Inc. v. Natural Gas Pipeline Co. of America, 210 F.3d 389(10th Cir 2000); BancOklahoma Mortgage Corp. v. Capital Title Co., 194 F.3d 1089, 1102 (10th Cir .1999).

Plaintiff's Complaint does not adequately describe an "enterprise" with a distinct existence and structure, as required by RICO. Section 1962(c) provides: [i]t shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt. 18 U.S.C. § 1962(c).

An enterprise may be either a legal entity or a "group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). To plead the existence of such an enterprise, the complaint must show (1) "an ongoing organization with a decision-making framework or mechanism for controlling the group;" (2) with associates that "function as a continuing unit;" and (3) which is "separate and apart from the pattern of racketeering activity." United States v. Sanders, 928 F.2d 940, 943-44 (10th

Cir.1991) (applying criteria identified in United States v.Riccobene, 709 F.2d 214, 223-24 (3d Cir.1983)). "A RICO enterprise is an ongoing structure of persons associated through time, joined in purpose, and organized in a manner amenable to hierarchical or consensual decision-making." Dirt Hogs Inc. v. Natural Gas Pipeline Co. of America, 210 F.3d 389 (!0th Cir. 2000)(citing United States v. Rogers, 89 F.3d 1326,_1337 (7th Cir.1996)). Considering the centrality of the enterprise to a RICO claim, "a nebulous, open-ended description of the enterprise does not sufficiently identify this essential element." Dirt Hogs Inc. v. Natural Gas Pipeline Co. of America, 210 F.3d 389 (!0th Cir. 2000)(citing Richmond v. Nationwide Cassel L.P., 52 F.3d 640, 645 (7th Cir.1995)). Plaintiff's Complaint fails to state a RICO claim. For this reason, Defendants respectfully request the Plaintiff's Complaint be dismissed for failure to state a claim.

V. CONCLUSION

For all of the preceeding reasons, Defendants Bates, Leavitt, and CCB respectfully request that Plaintiff Dickerson's Complaint be dismissed for failure to state a claim upon which relief can be granted.

Respectfully Submitted,
s/ Michael Crow
MICHAEL CROW, #07707
MARTHA BURNETT CROW, #15863
Crow, Clothier & Bates
Attorneys at Law
302 Shawnee Street, P.O. Box 707
Leavenworth, KS 66048
(913) 682-0166

APPENDIX-H

Steve Phillips, #14130
Assistant Attorney General
Memorial Building, 2nd Floor
120 SW Tenth Street
Topeka, KS 66612
(785) 296-2215
phillips@ksag.org

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DURAND DICKERSON,
Plaintiff,

v. Case No. 03-2337-JWL

G. RONALD BATES, JR.; CHARLENE BROWN; PAUL LEAVITT, DEBORAH LEAVITT; CROW, CLOTHIER & BATES, a Kansas Corporation,
Defendants.

MEMORANDUM IN SUPPORT OF DEFENDANT BROWN'S MOTION TO DISMISS

In accordance with D. Kan. 7.1(a) and D. Kan. 7.6, Defendant Charlene Brown, former Clerk of the District Court, Leavenworth County, Kansas, by and through counsel, Steve Phillips, Assistant Attorney General for the State of Kansas, submits this Memorandum in Support of Defendant's Motion to Dismiss filed herewith.

For reasons set forth herein, Defendant Brown respectfully requests that his Motion to Dismiss be granted by the Court, and that she receive such other and further relief as the Court deems just and proper.

NATURE OF THE MATTER BEFORE THE COURT

Plaintiff Durand Dickerson, proceeding *pro se*, seeks damages pursuant to the Racketeering Influenced and Corrupt Organizations Act 10 U.S.C. §§1861-1868. Defendant Charlene Brown is the former Clerk of the District Court, Leavenworth County Kansas. The other defendants are Paul and Deborah Leavitt, successful plaintiffs in two state court actions against Dickerson; the Leavitt's attorney, G. Ronald Bates, and Mr. Bates law firm, Crow, Clothier & Bates. The state court judgments and related garnishment orders that Dickerson complains of were the subject of several unsuccessful appeals and attempts at collateral attack by Dickerson, as noted by the other defendants in this matter in their motion to dismiss.

Defendant Brown must also be dismissed for the following reasons: all her actions were taken as Court Clerk and she is entitled to Absolute Judicial Immunity; the judgments and garnishment orders are valid orders from a state court proceeding and cannot be reviewed by this court pursuant to the *Rooker-Feldman* doctrine; Dickerson fails to plead facts upon which relief can be granted under RICO; and to the extent Dickerson is suing Defendant Brown in her official capacity, his suit is barred by the 11th Amendment. Dickerson is also barred by the doctrine of collateral estoppel.

STATEMENT OF FACTS

1. Plaintiff Durand Dickerson proceeds *pro se*. *(See* Complaint.)

2. Defendant Charlene Brown was, during the time period covered by Dickerson's Complaint, Clerk of the District Court, Leavenworth County, Kansas. (Complaint, p 4, ¶ 18.)

3. Dickerson seeks damages under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1861-1868. All allegations and counts relate to two state court proceedings against him, 9704-LC-474 and 9608-LC-698 in connection with a successful eviction and judgment against him. (*See* Complaint, Counts 1, p 11 though Count 8, p 23.) Dickerson refers to the judgments and garnishment orders entered in these cases as "void" throughout his Complaint without referring to or attaching any court orders showing they are void.

4. Dickerson sought to appeal 9704-LC-474 in Kansas Court of Appeals case No. 97-79561. The Kansas Court of Appeals dismissed his appeal. Attached as
Exhibit A to this Memorandum is the Kansas Court of Appeals mandate and opinion in case No. 97-79561.

5. Dickerson sought to appeal 9608-LC-968 in Kansas Court of Appeals case No. 97-77882. The Kansas Court of Appeals dismissed his appeal. Attached as Exhibit B to this Memorandum is the Kansas Court of Appeals mandate and opinion in Case No. 97-79561.

6. Dickerson apparently sought to collaterally attack both Cases 9608-LC-698 and 9704-LC-474 in Kansas Court of Appeals Case No. 99-84356-A. The Kansas Court of Appeals dismissed the appeal. Attached as Exhibit C is the entire appellate record in Case No. 99-83456-A.

7. Dickerson also attempted to relitigate cases 9608-LC-698 and 9704-LC-474 in yet another appeal. The Kansas Court of Appeals affirmed the trial court in Case No. 83,451, Exhibit D.

8. Dickerson also filed a case in federal court also attempting to collaterally attack the state court orders. Two of the defendants were Leavenworth County District Court Judges Philip Lacy and David King. The Court dismissed, on the grounds that it lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine, and specifically as to the judges, that the judges were absolutely immune from suit. *Dickerson v. Leavitt Rentals*, 995 F. Supp. 1242 (D. Kan. 1998). The Court of Appeals Affirmed in *Dickerson v. Leavitt Rentals*, No. 98-3053, 1998 WL 380923 (10th Cir. June 17, 1998). Cert. was denied at 525 U.S. 110 (1999).

QUESTIONS PRESENTED

1. Defendant Brown is Entitled to Absolute Judicial Immunity.

2. Suit is Barred by the Rooker-Feldman Doctrine.

3. Dickerson Fails to State a Valid RICO Cause of Action.

4.Defendant Brown is Entitled to 11th Amendment Immunity.

5. Collateral Estoppel Bars Dickerson's Suit Against Defendant Brown.

ARGUMENTS AND AUTHORITIES

Standard for Motions to Dismiss

The standard for ruling on a motion to dismiss for failure to state a RICO claim based on fraud pursuant to both Fed. R. Civ. P.12(b)(6) and Fed. R. Civ. P. (b) has been stated as follows:

> In reviewing the motion to dismiss, this Court must accept the factual allegations of the complaint as true and must view the complaint in the light most favorable to Plaintiff. *GE Investment Private Placement Partners v. Parker*, 247 F.3d 543, 548 (4th Cir.2001).
>
> However, a RICO claim based on fraud is subject to the requirement, imposed by Rule 9(b), that each element of the RICO violation and its predicate acts of racketeering must be pled with particularity, a requirement justified by the "threat of treble damages and injury to reputation." Cayman Exploration Corp. v. United Gas Pipe Line, 873 F.2d 1357, 1362 (10th Cir.1989). *Martinez v. Martinez*, 207 F. Supp. 2d 1303 (D. N.M. May 08, 2002), *aff□d in part and vacated in part* (on other, unrelated grounds) 62 Fed. Appx. 309 (No. 02-2182, 02-2188 10th Cir. Apr. 21 2003).

The standard for ruling on a motion to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) has been stated as follows:

When defendants bring a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, the plaintiff must carry the burden of proving jurisdiction. *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991), cert. denied, 503 U.S. 984 (1992); In deciding a Rule 12(b)(1) motion, the court may consider evidence outside the pleadings without converting the proceeding to one for summary judgment. *Cizek v. United States,* 953 F.2d 1232, 1233 (10th Cir. 1992); *Jensen v. Johnson County Youth Baseball League*, 838 F. Supp. 1437, 1440 (D. Kan. 1993). For purposes of deciding a 12(b)(1) motion, the court accepts well-pleaded material allegations in the complaint as true and construes them to favor the plaintiff. See *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir.), cert. denied, 115 S. Ct. 188 (1994) . . .. Mounkes v. Conklin, 922 F. Supp. 1501, 1505-06 (D. Kan. 1996). In any event, conclusory allegations need not be taken as true. *Swanson v. Bixler,* 750 F.2d 810, 813 (10th Cir.1984). Nor should Dickerson's *pro se* status allow him to avoid rules of pleading. Although a plaintiff may have chosen to proceed *pro se*, "it is not the proper function of the district court to assume the role of advocate for the pro se litigant." *DeYoung v. State of Kansas*, 890 F. Supp. 949, 951 (D. Kan. 1995), aff'd, 69 F.3d 547 (10th Cir. 1995), cert. denied, 517 U.S. 1236 (1996) (citing *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)). The Court is not required to "supplyadditional factual allegations to round out a plaintiff's complaint or construct a legal theory on plaintiff's behalf." *Whitney v. State of New Mexico*, 113 F.3d 1170, 1173-74 (10th Cir. 1997) (citing *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)).

1. Defendant Brown is Entitled to Absolute Judicial Immunity.

All of Dickerson's claims against Defendant Brown relate to actions she took in accordance with her duties as District Court Clerk, for which she is entitled to absolute judicial immunity. In Dickerson's Complaint, page 3, paragraph 12 he states:

> Defendant Charlene Brown, as clerk of the District Court for Leavenworth Kansas, files papers on behalf of persons throughout the United States, especially suits on behalf of military personnel.

On page 4 of his Complaint, paragraph 18 he states:

> Charlene Brown, court clerk, (hereinafter "Clerk") is a clerk of the Leavenworth County District Court, and was during the period covered by this complaint, and is a citizen of the State of Kansas.

In each of his allegations against Defendant Brown, Dickerson alleges she took some action as court clerk in the Leavenworth County District Court cases. As noted in the Statement of Facts, both cases to which Dickerson refers were valid, enforceable judgments and the garnishment orders were valid enforceable orders in 9608-LC-698 and 9704-LC-474, none which were **not** reversed on appeal or pursuant to collateral attack.

The 10th Circuit has held that court personnel performing functions integral to the judicial process are entitled to absolute judicial immunity. In *Whitesel v. Sengenberger*, 222 F.3d 861, 867 (10th Cir. 2000), in holding pretrial service officers absolutely immune, the Court said,

"Judges are absolutely immune from civil liability for judicial acts, unless committed in the clear absence of all jurisdiction." *Henriksen v. Bentley*, 644 F.2d 852, 855 (10th Cir.1981) (citing *Stump v. Sparkman*, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978)). A judge does not act in the clear absence of all jurisdiction even if "the action he took was in error, was done maliciously, or was in excess of his authority." *Stump*, 435 U.S. at 356-57, 98 S.Ct. 1099. Moreover, "[a] judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors." Id. at 359, 98 S.Ct. 1099.

'[I]mmunity is justified and defined by the functions it protects and serves, not by the person to whom it attaches.' " *Valdez v. City and County of Denver,* 878 F.2d 1285, 1287 (10th Cir.1989) (quoting *Forrester v. White*, 484 U.S. 219, 227, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988)). Consequently, "[i]mmunity which derives from judicial immunity may extend to persons other than a judge where performance of judicial acts or activity as an official aid of the judge is involved." *Henriksen*, 644 F.2d at 855. Thus, absolute judicial immunity has been extended to non-judicial officers where "their duties had an integral relationship with the judicial process." *Eades v. Sterlinske*, 810 F.2d 723, 726 (7th Cir.1987).

In *Wiggins v. New Mexico State Supreme Court Clerk*, 664 F.2d 812 (10th Cir. 1981), the Court said in holding a state court clerk absolutely immune:

[W]e fully agree with this language contained in *Blouin v. Dembitz*, 367 F.Supp. 415 (S.D.N.Y.1973), aff'd, 489 F.2d 488 (2d Cir. 1973): Statutes and ruling case law protecting state judges in the discharge of their functions may not be circumvented or vitiated, by pretending to maintain this suit also against their "clerks, servants and agents" for no court can discharge its judicial duties without the aid of clerks, servants and agents.

See also Lundah v. Zimmerman, 296 F.3d 936, 939 (10th Cir. 2002).

In *Dopp v. Loring*, 02-5017, 2002 WL 31839852 (10th Cir. Dec. 19, 2002), the court considered a case very similar to this one. A *pro se* plaintiff brought a RICO suit against a number of persons including a state court clerk for seizure of the plaintiff's property pursuant to a valid state-issued search warrant. The 10 Circuit upheld the district court's dismissal of the state court clerks along with other judicial defendants on the grounds of absolute judicial immunity (as well as the *Rooker-Feldman* doctrine.) Quite clearly, the doctrine of absolute judicial immunity applies to RICO suits.

Because Defendant Brown was a court clerk and because all acts alleged are actions she took as court clerk in furtherance of the judicial process, she should be dismissed from this suit.

2. Suit is Barred by the Rooker-Feldman Doctrine.

Dickerson is attempting to relitigate state court cases in which he was the losing party. Using a federal cause of action as a means of seeking review of state court [1] The *Rooker-Feldman* Doctrine is the common name to the rule stating that federal district courts have no jurisdiction to review final judgments of a state court. The rule stems from the holdings in *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 476 (1983), and *Rooker v. Fidelity Trust Co.* , 263 U.S. 413, 415-16 (1923). *See Mounkes v. Conklin*, 922 F. Supp. 1501, 1508-10 (D. Kan. 1996) (discussing the rule and citing numerous cases). decisions is barred by the *Rooker-Feldman* Doctrine.[1] Under that Doctrine, federal district courts simply do not have jurisdiction to review decisions of a state court. Such review is solely within the jurisdiction of the United States Supreme Court. *See* 28 U.S.C. § 1257; see also, *Facio v. Jones*, 929 F.2d 541, 543 (10th Cir. 1991).

The *Rooker-Feldman* Doctrine also bars federal district court review of any claim "inextricably intertwined" with claims decided by a state court. *Mounkes*, 922 F. Supp. at 1509. ("*[Rooker-Feldman* Doctrine] applies to attempts not only to review directly a state court decision but also to review indirectly a state court decision when the federal claim is 'inextricably intertwined' with the merits of the state court's decision.")

Dickerson's Complaint calls upon the court to find that the state court judgments against him were invalid. In his previous federal case, Dickerson lost on the grounds of *Rooker-Feldman,* with the court saying, "We cannot envision how plaintiff could obtain any relief based on his federal claim without a factual finding that the state court judgments entered against plaintiff were erroneous." *Dickerson* 995 F. Supp. at 1247.

The 10th Circuit has applied *Rooker-Feldman* to RICO suits in which relief would have implied the invalidity of state court actions. In *Dopp,* 2002 WL 31839852 at 2 (discussed above) the court said in upholding the dismissal of two state court clerks:

> To the extent plaintiff alleged illegal activity under RICO for actions taken pursuant to rulings of a state court, the district court correctly concluded that its jurisdiction was barred by the *Rooker-Feldman* doctrine.

There is no judgment that this Court could render on this Complaint that would not require an impermissible review of the earlier state court decisions. See *Feldman,* 460 U.S. at 483 n.4. Therefore, the Complaint must be dismissed for lack of subject matter jurisdiction. *See Van Sickle v. Holloway*, 791 F.2d at 1436 (dismissing *pro se* action against state judges based upon *Rooker-Feldman* doctrine); *Anderson v. State of Colo.*, 793 F.2d 262, 263-264 (10th Cir. 1986); *Razatos v. Colorado Supreme Court*, 746 F.2d 1429, 1432 (10th Cir. 1984), *cert. denied* 471 U.S. 1016 (1985).

Dickerson's Complaint should be dismissed on the grounds that subject matter jurisdiction is not present against Defendant Brown.

3. Dickerson Fails to State a Valid RICO Cause of Action.

Dickerson fails to state a cause of action under RICO, 10 U.S.C. §§ 1961-1968. Dickerson's RICO claim is one based upon what Dickerson believes to be fraud. The word "fraud," is liberally sprinkled through his Complaint. Yet Dickerson fails by a wide mark to meet the pleading requirements for a RICO fraud claim.

> A civil RICO claim is "an unusually potent weapon--the litigation equivalent of a thermonuclear device." *Katzman v. Victoria's Secret Catalogue*, 167 F.R.D. 649, 655 (S.D.N.Y.1996). For this reason, there is a strong temptation for plaintiffs to raise a RICO claim, even when the claim is obviously frivolous.

Martinez, 207 F. Supp. 2d at 1308.

Courts have required plaintiffs bringing RICO claims based on fraud to comply with Rule 9(b) so that

> each element of the RICO violation and its predicate acts of racketeering must be pled with particularity, a requirement justified by the "threat of treble damages and injury to reputation." *Caman Exploration Corp. v. United Gas Pipe Line*, 874 F.2d 1357, 1462 (10th Cir. 1989).

Id at 1305.

While Dickerson's Complaint is vague and meandering, RICO is technical and specific. To survive a Rule 12(b)(6) motion to dismiss, a RICO plaintiff must adequately allege (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering. *Id.*

Dickerson fails to state an adequate enterprise.

> To state a civil Rico claim, it is not sufficient to allege that a group of individuals or business committed predicate acts of racketeering. [Citation omitted.] The plaintiff must also identify the criminal enterprise, a separate entity, on whose behalf the individuals acted. This enterprise must have an existence apart from the pattern of racketeering, must be an ongoing organization, and must function as a continuing unit as shown by a hierarchal or consensual decision-making structure. [Citations omitted.] The purpose of this requirement is to satisfy Congressional intent in enacting RICO; RICO

was not intended to simply create another form of conspiracy, but was aimed at preventing criminal organizations from taking over legitimate businesses or engaging in a pattern of racketeering acts.

Id. at 1306.

Dickerson identifies no "enterprise" other than the defendants. He in fact specifically identifies the enterprise as the defendants. (Complaint p. 8 ¶ 47.) This is wholly inadequate to plead an enterprise.

Dickerson identifies no long term pattern. In *Martinez*, the Court held "that the mere fact that the alleged fraud occurred over a four-year period is not sufficient to state an actionable pattern of racketeering. " *Id.* at 1307. While the allegations by Dickerson spread over at least the years 1996 to 1999, they are really one closely related series of acts--a civil case against Dickerson and entry and enforcement of judgment against him.

The 10th Circuit has described what is necessary to establish a pattern of racketeering in *Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1543 (10th Cir. 1993):

> The Supreme Court has elaborated on RICO's limited definition of the "pattern" element. Although proof of at least two predicate racketeering acts are necessary to prove a pattern, that may not be sufficient. *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 236-37, 109 S.Ct. 2893, 2899, 106 L.Ed.2d 195 (1989) (citing *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n. 14, 105 S.Ct. 3275, 3285 n. 14, 87 L.Ed.2d 346 (1985)). The Supreme

Court has concluded that Congress intended that the pattern element "requires the showing of a relationship between the predicates, ... and the threat of continuing activity"—that is, "continuity plus relationship." *H.J. Inc.*, 492 U.S. at 239, 109 S.Ct. at 2900 (emphasis added) (citations and quotations omitted). Only the continuity prong of the pattern element is at issue in this case. "Continuity" is both a closed and open-ended concept: closed-ended referring to a closed period of repeated conduct and open-ended referring to conduct that by its nature projects into the future with a threat of repetition. See *id.* at 241, 109 S.Ct. at 2902; *Phelps v. Wichita Eagle-Beacon*, 886 F.2d 1262, 1273 (10th Cir.1989). A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. *H.J. Inc.*, 492 U.S. at 242, 109 S.Ct. at 2902; Phelps, 886 F.2d at 1273. Predicate acts extending over a few weeks or months are insufficient to show closed-ended continuity. *H.J. Inc.*, 492 U.S. at 242, 109 S.Ct. at 2902. Open-ended continuity depends upon the facts of each case, and may be established by showing that the predicates themselves involve a distinct threat of long-term racketeering activity, either implicit or explicit, or that the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise. Id. at 242-43, 109 S.Ct. at 2902.

Dickerson pleads no facts establishing an open-ended pattern. As to a closedend pattern, because the pattern is really just the one act of obtaining and enforcing a judgment.

Dickerson also fails to plead facts establishing any true predicate acts. While Dickerson cites numerous criminal statutes, like the plaintiff in *Martinez*, he simply fails to state any facts that would constitute the crimes he alleges. It is impossible to understand, for instance, how mailing a journal entry could constitute mail fraud as he alleges on page 12 of his Complaint.

Dickerson also fails to allege any coherent connection to interstate commerce. Each prohibited act under 18 U.S.C. § 1962 must affect interstate commerce. While Dickerson makes general allegations about Interstate commerce on page 3 of his Complaint, his allegations have nothing to do with the acts he alleges as the basis for the alleged RICO violations. All acts constituting the RICO violations seem to have occurred entirely within Kansas.

Dickerson fails to state any valid claims for RICO violations, and Defendant Brown requests his Complaint be dismissed for failure to state a claim.

4.Defendant Brown is Entitled to 11th Amendment Immunity.

While it is difficult to tell, Dickerson may be suing Defendant Brown in her official capacity which is barred by 11th Amendment Immunity. In his Complaint he includes the following statements:

> Defendant Charlene Brown, as clerk of the District Court for the County of Leavenworth, Kansas, files papers on behalf of persons

> throughout the United States, especially suits on behalf of military personnel.

Complaint, p 3 ¶ 12.

> Charlene Brown, court clerk, (hereinafter "CLERK") is clerk of the Leavenworth County District Court, and was during the period covered by this complaint, and is a citizen of the State of Kansas.

Complaint, p 4 ¶18.

> Dickerson then goes on to repeatedly refer to her as "CLERK" throughout the Complaint.

The Eleventh Amendment bars suit for damages in federal court against a State, its agencies or officials. *E.g., Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 72, 73, 76 (1996); Edelman v. Jordan, 415 U.S. 651, 663 (1974)*; Sturdevant v. Paulsen*, 218 F.3d 1160, 1164 (10th Cir. 2000).

5. Collateral Estoppel Bars Dickerson's Suit Against Defendant Brown.

Dickerson is collaterally estopped to bring this action. Collateral estoppel applies when it is determined that:

> (1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party, or in privity with a party, to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

Dodge v. Cotter Corp., 203 F.3d 1190, 1197 (10th Cir.2000).

All of Dickerson's RICO claims are an attempt to relitigate the state cases to which he is a party concerning his landlord tenant dispute with Defendant Leavitts. Dickerson also attempted to collaterally attack those court decisions in his federal court case, *Dickerson v. Leavitt Rentals*, 995 F. Supp. 1242 (D. Kan. 1998). He again raises the same basic underlying issues. As to Defendant Brown, he is collaterally estopped from doing so.

CONCLUSION

Wherefore, for all of the reasons stated herein, Charlene Brown, former Clerk of the District Court of Leavenworth County, Kansas, requests that this action against her be dismissed with prejudice and that she be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,
OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE
/S/ Steve Phillips
Steve Phillips, #14130
Assistant Attorney General
Office of the Attorney General
Memorial Hall, 2nd Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1597
(785)296-2215
Attorney for Charlene Brown

APPENDIX-I
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DURAND DICKERSON
Plaintiff

v. CASE NO. 03-2337-JWL

G. RONALD BATES JR.; CHARLENE
BROWN, PAUL LEAVITT, DEBORAH
LEAVITT; CROW, CLOTHIER & BATES
a Kansas Corporation,
Defendants.

DICKERSON RESPONSE TO BATES, LEAVITT'S CROW, CLOTHIER & BATES MOTION TO DISMISS

COME NOW, Durand Dickerson, plaintiff and files this response to G. Ronald Bates Jr., Paul and Deborah Leavitt, and Crow, Clothier & Bates Motion to Dismiss.

MEMORANDUM IN SUPPORT

I
NATURE OF THE MATTER BEFORE THE COURT

Dickerson filed a 25 page 1st Amended Complaint under U.S.C. 1961 *et seq.* setting forth violations of 18 U.S.C. 1001; 18 U.S.C. 1341, 1346; 18 U.S.C. 371; 18 U.S.C. 2(a) and (b); 18 U.S.C. 1956 and 1957; K.S.A. 33-106; K.S.A. 21-3705; K.S.A. 21-3711; K.S.A. 21-3701(a)(1)(2)(3) and (b)(2) for violation for federal and State of Kansas Criminal Statues.

II

STATEMENT OF FACTS

Dickerson's complaint page 7 sets forth the pattern of racketeering activity with particularity that took place between August 1996 to October 1999.

Dickerson's complaint page 8 sets forth that the enterprise is an association-in-fact made up of the defendants.

Dickerson's complaint pages 11 to 15 sets forth in 18 numbered paragraphs with particularity the mail fraud counts under 18 U.S.C. 1961 R.I.C.O. and 18 U.S.C. 1341.

Dickerson's complaint pages 15 to 17 sets forth in 14 numbered paragraphs with particularity the conspiracy of the defendants, pursuant to 18 U.S.C. 371.

Dickerson's complaint page 17 sets forth in 6 numbered paragraphs the conspiracy pursuant to 18 U.S.C. 1962(d) with particularity.

Dickerson's complaint pages 18 and 19 sets forth in 5 numbered paragraphs with particularity the money laundering acts pursuant to 18 U.S.C. 1957 and 1957.

Dickerson's complaint pages 19 and 20 set forth with particularity in 11 numbered paragraphs the false statement made pursuant to 18 U.S.C. 1001.

Dickerson's complaint pages 20 and 21 sets forth with particularity in 10 numbered paragraph the deprivation of the intangible right to honest government services pursuant to 18 U.S.C. 1346.

Dickerson's complaint pages 22 to 24 sets forth with particularity in 19 numbered paragraphs the State of Kansas Criminal Code Violation, pursuant to K.S.A. 21-3711; K.S.A. 33-101 *et seq.*

III

STATEMENT OF THE QUESTIONS PRESENTED

A). SERVICE OF DEFENDANT CROW, CLOTHIER & BATES WAS IMPROPER
B). DICKERSON'S CAUSES OF ACTION ARE NOT BARRED BY THE DOCTRINES OF RES-JUDICATA OR COLLATERAL ESTOPPEL
C). DICKERSON'S CAUSES OF ACTION ARE NOT BARRED BY THE ROOKER-FELDMAN DOCTRINE
D). DICKERSON COMPLAINT STATES CAUSES OF ACTION AGAINST THE DEFENDANTS UNDER 18 U.S.C. 1961 *et seq.*

(A)

SERVICES ON DEFENDANT CROW, CLOTHIER & BATES WAS IMPROPER

Dickerson admits that his service on the defendants Crow, Clothier & Bates was improperly done.

Pursuant to this circuit's case law[1] if service is defective, as admitted by Dickerson and it is curable, the Court will quash the service with leave to re-serve.

Therefore, Dickerson seeks on Order from this Court quashing the service on defendants Crow, Clothier & Bates, with leave granted to re-serve.

(B)

DICKERSON'S CAUSES OF ACTION ARE NOT BARRED BY THE DOCTRINES OF RES-JUDICATA OR COLLATERAL ESTOPPEL

Res-judicata was judicially created for the purpose of an end to litigation once controversies have been decided on their merits.

Dickerson's Statement of Facts(II) sets forth with particularity pursuant to Federal Rules of Civil Procedures 9(b) the **criminal acts** by the defendants that were **never** a part of any prior State of Kansas or federal court case. All the listed actions by the defendants were civil cases.

---

[1] *Gregory v. United States*, 942 F2d, 1498, 1500 (10th Cir. 1991)

In the prior civil cases there were no decision of mail fraud 18 U.S.C. 1341; intangible right to honest government service 18 U.S.C. 1346; false statement 18 U.S.C. 1001; money laundering 18 U.S.C. 1956 and 1957; conspiracy 18 U.S.C. 371; aiding and abetting 18 U.S.C. 2; or any State of Kansas criminal violations K.S.A. 33-101 *et seq.,* K.S.A. 21-3700 *et seq.*

The defendants cannot plead res-judicata on any cause of action in Dickerson's 1st Amended Complaint.

The defendants beginning on page 5 and continuing to page 7 sets forth a rambling argument on res-judicata, and then never cites (1) one case in Kansas state court or federal court that tried the criminal issues raised in Dickerson's 1st Amended Complaint.

The failure of the defendants to cite any case or record of such res-judicata as to a final judgment, on the merits of the criminal charges in Dickerson's 1st Amended Complaint, pursuant to their Exhibits B through F violates Local Rule 7.6 and Federal Rules of Civil Procedure 12(b).

Under collateral estoppel a court has decided an issue of fact or law necessary to it's judgment, that decision precludes re-litigation of the issues.

In Dickerson's 1st Amended Complaint there are **no** issues based upon any underlying issues decided in any prior case as set forth in the defendant's Exhibits B through F.

The defendants make the bald unsupported statement on pages 7 and 8 that the matters on which plaintiff Dickerson bases his complaint were previously tried and adjudicated, and then lists the State of Kansas case numbers and the lone federal case number without one cite to one exhibit that was adjudicated as to the criminal statues set forth by Dickerson.

The reasons is simple, there is not one statement as to 18 U.S.C. 371; 18 U.S.C. 1001; 18 U.S.C. 1341; 18 U.S.C.1346; 18 U.S.C. 1957 & 1957, or K.S.A. 33-101 *et seq.* K.S.A. 21-3701 *et seq.* in any of the Exhibits B through F.

However, since the defendants failed to point to the record for support of their argument, the standard of this Circuit is, to not look for it.

Further the defendants makes a totally false statement on page 8 that the identical persons are parties of the instant action. defendants Exhibits B through F nowhere lists Charlene Brown, thereby proof on their own record of this reckless statement.

The defendants would ask this Court to assume since they prevailed in a civil case, that criminal laws violated after that is barred by res-judicata and collateral estoppel.

This Circuits case laws is straight-forward;

A) IS THE ISSUE PREVIOUSLY DECIDED INDENTICAL WITH THE ONE PRESENTED IN THIS ACTION?

Certainly not, there is no **criminal complaints** in any of the prior actions.

B) THE PRIOR ACTION WAS FINALLY ADJUDICATED ON THE MERITS.

All the prior **civil action** were adjudicated on the merits.

C) THE PARTY OR PARTIES WERE PARTIES TO THE PRIOR ADJUDICATION.

All the defendants in this cause of action were not parties in any of the prior cases. Charlene Brown was never a party in the prior cases.

D) THE PARTY HAS A FULL AND FAIR OPPORTUNITY TO LITIGATE THE ISSUE IN THE PRIOR ACTIONS.

The criminal violations all took place after the prior action, and Dickerson was unable to litigate the issues.[2]

The defendants on page 9 of their motion allude to the fact that since there were civil cases they were involved in with Dickerson during the period of August 1996 through October 1999 that is Court should overlook their criminal violations.

---

[2] *Dodge v. Cotter Corp.* 203 F3d 1190. 1197 (10th Cir. 2000)

Dickerson as set forth in his Statement of Facts, and in his complaint page 22, paragraph 126, 127 129 and 131 with straight forward language of pay, date, time and place with the necessary elements of criminal fraud. Dickerson does not see how the defendants can say that "this is extremely vague and difficult to understand".

Dickerson set forth in his complaint page 16 paragraphs 79, 80, 81,82, 83, 84, 85, 86, 87, and 88 with straight forward language of the elements of mail fraud, a criminal act.

The defendants cite no cases in this circuit or anywhere else, that receiving judgment in a civil cause of action absolves them of criminal liability. Dickerson would only point to World Com.and Bernard Ebbers for this fact.

(C)
ROOKER-FELDMAN DOCTRINE

The Rooker-Feldman Doctrine takes it name from two(2) cases.[7] Under this doctrine a federal district court does not have **subject matter jurisdiction** to hear a **direct appeal** from a final judgment of a state court. The United States Supreme Court vested with jurisdiction to hear such an appeal.

Here Dickerson has not done a direct appeal based upon a final judgment of a state court. This Court has jurisdiction over the subject matter pursuant to 18 U.S.C. 1961 *et seq.* R.I.C.O., see Dickerson's 1st Amended Complaint, (I) Jurisdiction page 1.

Furthermore a R.I.C.O. action is not a direct appeal of a state court judgment but is independent criminal jurisdiction over crimes committed.

The Supreme Court has applied Rooker-Feldman to hold that a federal district court is without subject matter jurisdiction only in two (2) cases from which the doctrine takes its name.

In *Rooker* the plaintiff had lost in state court. The legal wrong alleged was that the state court had made errors in deciding the constitutional claims, rather than the **defendant acted illegally.** Dickerson alleges in his complaint, pages 11-24 how the defendants acted illegally.

In essence *Rooker* held that when a losing plaintiff in state court brings a suit in Federal District Court asserting legal wrongs, **allegedly erroneous legal rulings** of the state court, and seeks to vacate or set aside the judgment of the state court, the federal suit is a forbidden de facto appeal. Here Dickerson does not challenge to vacate or set aside any judgment in any of the listed state court actions previously decided. Dickerson charges violations of the federal criminal statues under R.I.C.O. of action taken though an association-in-fact enterprise, see Dickerson's 1st Amended Complaint page 12 paragraphs 64-67.

---

[7] Rooker v. Fidelity Trust Co. 263 US 413 (1923)
Dist. Of Columbia Court of Appeals v. Feldman 460 US 462 (1983)

In *Feldman*, two plaintiffs were graduates of an unaccredited law school who petitioned the District of Columbia district court for waivers that prevented them from taken the bar examination. The plaintiffs has previously petitioned the local courts for waivers based upon the 5th Amendment and anti trust laws, and were denied.

The Supreme Court noted that the District of Columbia local court had acted both judicially and legislatively. In applying the rule to deny the waivers it acted judicially, @ 479. In promulgating its rule, on the other hand it acted legislatively, @ 485 and 486.

The Supreme Court divided its analysis into two parts. First the Court held that part of the plaintiffs' suit was a forbidden de-facto appeal of the judicial decision of the D.C. court. Here Dickerson is not appealing any Kansas State court decisions.

Second the Supreme Court permitted the plaintiff's challenge to the local court's legislature acts of promulgating its rule regulating the bar examination @487. This was a challenge to the validity of the rule rather than a challenge to the application of the rule.

The Supreme Courts' answer was straightforward. [I]f the constitutional claims presented to the United States District Court are 'inextricably intertwined' withe the states court denial in a judicial proceeding, then the District Court is in essence being called upon to review the state court decision. Here Dickerson raised only federal criminal and state criminal violations that was not raised in the state court proceedings. Therefore the issues raised in Dickerson's R.I.C.O. complaint are not 'inextricably intertwined' with the state court's judicial proceedings and do not require review of a judicial decision in any state court proceedings then this Court has subject matter jurisdiction.

Therefore the Feldman test for inextricably intertwined does not apply in Dickersons' R.I.C.O. actiion and cannot be construed as a forbidden de-facto appeal. This Circuit has already set precedent on this issue[8] when Judge Ebel stated: "a federal District Court plaintiff is barred by Rooker-Feldman from seeking to **vacate** and to **set aside** a previously entered state judgment ....." Certainly in Dickersons' R.I.C.O. complaint he has not asked for not does he seek to vacate or set aside any state court judgment.

The United States Supreme Court has never, outside of Rooker and Feldman themselves employed the doctrine to hold that a federal district court is without subject matter jurisdiction. It is a forbidden de-facto appeal under Rooker-Feldman when a plaintiff in federal district court complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court. Dickersons' complaint is not against the judgments of the state court, nor does he seek relief from the judgments of the state court, only the criminal wrongs committed by the defendants. Dickerson does not complain of a **legal injury** caused by a state court judgment, but rather a legal injury caused by an adverse party which Rooker-Feldman does not bar jurisdiction. Even if the federal plaintiff and the adverse party have litigated the same or a similar dispute in state court, a federal suit under R.I.C.O may proceed under the long-standing rule permitting parallel state and federal litigation.[9]

Dickerson has not brought a forbidden de-facto appeal from any of the earlier state court judgments. The inextricably intertwined analysis of Feldman does not apply in this complaint. The claims against the clerk (Brown) are not a claim precluded, because the clerk was never a party in any state court actions.

---

[8] Facio v. Jones 929 F2d 541, 543 (10th Cir. 1991)

[9] Atlantic Coast Line Railroad v. Brotherhood of Locomotive Engineers 398 US 281, 295 (1970)

Only a court of competent jurisdiction may here cases arising under federal mail fraud, wire fraud, money laundering conspiracy statues, and the R.I.C.O. statue 18 U.S.C. 1961 *et seq.* includes no jurisdictional restrictions.[10]

Dickerson is not claim precluded from bringing a claim which could not have been litigated during a prior action. Certainly the criminal claims in Dickerson's 1st Amended Complaint took place after the final decision in the state court proceedings.

For these reasons, the Rooker-Feldman Doctrine does not apply in this cause and this court should deny defendants G. Ronald Bates Jr., Paul and Deborah Leavitt and Crow, Clothier & Bates motion on the Rooker-Feldman Doctrine.

---

[10] Allen v. McCurry 449 US 90, 103-105 (1980)

DICKERSON'S COMPLAINT STATES CAUSES ACTION AGAINST THE DEFENDANTS UNDER 18 U.S.C. 1961 ET SEQ.

First, Dickerson does not base any of his claims under R.I.C.O. in a landlord/tenant matter. The **crimes** committed by the defendants took place after the final adjudication in those matter.

Second, the defendants failed in their duty to this court as an officer to point out that the Supreme Court case law states: "A pattern is shown by at least two related acts .... "[11] which case came out some four (4) years after *Sedima* cited on page 13 of the defendants' motion.

TIMING AND NATURE

Plaintiff's 1st Amended Complaint in paragraph 66, 67, 68, 69, 70, 80, 81, 82, 83, 84, 90, 102, 109, 110, 111, 112, 117, 118, 119, 120, 127, 129, 131, and 138 sets forth the **specific** timing of the **criminal** acts. These paragraphs set forth more than two (2) acts, there are fifteen (15) acts and shows the relationship to each other, and were continuous over at least 4 years, and with recent discovery Dickerson has found this pattern involving others.

Dickersons' 1st Amended Complaint page 12 paragraph 66 through 75 are particular as to the parties, dates, crimes, and all the elements of mail fraud including materiality, are set forth.

The fact is Dickersons' 1st Amended Complaint is as particular as UNA[12] that in all arguments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Rule 9(b) is to be read in harmony with the simplified notice pleadings of Rule 8, that is the plaintiff must describe the circumstances of the fraud, the time-place-content of false representation, identify the person making the representation, the harm caused by plaintiffs' reliance on the false representation, and since *Neder* material misrepresentation.

---

[11] *HJ Inc. v. Northwestern Bell Telephone* 492 US 229 (1989)

[12] *UNA Plus Inc. v. Apria Healthcare Group Inc.* 29 F.Supp 2nd (D. Kan 1998)

Paragraph 66 in Dickersons' 1st Amended Complaint states the time, place, content of the false representation, identity of the persons, the harm caused by the false representation, and the material misrepresentations.

Paragraph 68 in Dickerson's 1st Amended Complaint states the time, place, content of the false representation, identity of the persons, the harm caused by the false representation, and the material misrepresentations.

Paragraph 71 in Dickersons' 1st Amended Complaint states the time, place, content of the false representation, identity of the persons, the harm caused by the false representation, and the material misrepresentations.

Paragraphs 105 through 113 in Dickersons' 1st Amended Complaint states the time, place, content of the false representation, identity of the persons, the harm caused by the false representation and the material misrepresentations.

Paragraphs 116 through 123 in Dickersons' 1st Amended Complaint states the time, place, content of the false representation, identity of the person, the harm caused by the false representation and the material misrepresentations.

Paragraphs 127 through 133 in Dickersons' 1st Amended Complaint states the time, place, content of the false representations, identity of the persons, the harm caused by the false representation and the material misrepresentations.

Dickersons' 1st Amended Complaint on page 5 number 25 sets forth the enterprise of an association-in-fact, see*UNA* @ 1259. Contractual relationships can be an enterprise, and **informal** association between two (2) contracting business will suffice.

There is nothing nebulous or open-ended about Dickersons' description of the enterprise of an association-in-fact and all the parties mentioned on page 8 paragraph 47.

CONCLUSION

For these reasons this court should deny the defendants motion to dismiss, or in the alternative grant Dickerson leave to amend his complaint

Respectfully submitted;

Durand Dickerson

Durand Dickerson

APPENDIX-J
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

DURAND DICKERSON
Plaintiff

vs. CASE NO. 03-2337-JWL

G. RONALD BATES JR.; CHARLENE
BROWN; PAUL LEAVITT, DEBORAH
LEAVITT; CROW, CLOTHIER & BATES
a Kansas Corporation
Defendants.

MEMORANDUM IN SUPPORT OF DICERSON'S RESPONSE TO BROWN'S MOTION TO DISMISS

In accordance with D. Kansas rule 7.6, Dickerson files this memorandum in support of response to defendant Brown's Motion to Dismiss.

I
NATURE OF THE MATTER BEFORE THE COURT

Dickerson filed his complaint pursuant to the R.I.C.O. Act 18 U.S.C. 1961 *et seq.* 18 U.S.C. 1341 and 1346; 18 U.S.C. 2; 18 U.S.C. 371; and not 10 U.S.C. 1861-1868 as alleged in Brown's motion on page-2 #3.

II
STATEMENT OF FACTS

The garnishment's which are the subject of Dickerson's R.I.C.O. action have never been the subject of any proceedings either in a state district court or a federal court at anytime in the past, *see* Dickerson's complaint pages 11 through 24.

Brown is not entitled to absolute judicial immunity as Dickerson has charged her violation of 18 U.S.C. 1346 that is the intangible right to good and honest government, (Dickerson's complaint pages 20-21). At best Brown could plead qualified immunity which she has not done.

The garnishment orders were not valid orders, and in fact Brown in conspiracy with the other named defendants withheld these funds from Dickerson, (Complaint page20 #115-123).

Dickerson is not charging Brown with crimes in her official capacity, but in her individual capacity because she acted without judicial authority to do so, (Dickerson's complaint page 20 through 25).

The Rooker-Feldman Doctrine does not apply to Brown because she was not a named defendant or plaintiff in any of the previous cases as set forth by Brown in he memorandum on page 2 #3 through #8.

III
QUESTION PRESENTED

A) BROWN IS NOT ENTITLED TO ABSOLUTE JUDICIAL IMMUNITY
B) R.I.C.O. AGAINST BROWN IS NOT BOUND BY THE ROOKER-FELDMAN DOCTRINE
C) DICKERSON STATED A R.I.C.O. CAUSE OF ACTION
D) BROWN IS NOT ENTITLED TO 11TH AMENDMENT IMMUNITY
E) COLLATERAL ESTOPPEL DOES NOT BAR DICKERSON'S R.I.C.O. COMPLAINT AGAINST BROWN

IV
ARGUMENTS AND AUTHORITIES

A

BROWN IS NOT ENTITLED TO ABSOLUTE JUDICIAL IMMUNITY

Dickerson's claims against Brown took place while she was acting as a clerk of the district court without authority to do so (see Dickerson's complaint pages 20 through 25).

Dickerson states with clarity that the actions taken by Brown were without authority to do so and the actions by Brown violated federal law, (Complaint pages 16 through 25). The fact is the garnishment orders were not valid and were not even orders.

The acts taken by Brown and the other co-defendants in a conspiracy, were done without any jurisdiction to do so either subject matter or personal jurisdiction.[1]

In the case of Dopps[2] cited by Brown is in opposition to her defense in that the search warrant in Dopps was valid and Dickerson has shown in his R.I.C.O. complaint that the garnishment were not valid (Complaint pages 16 through 25). The fact is the criminal actions of Brown gave the impression that the garnishments were valid when in fact they were not.

Dickerson has alleged a factual basis for his R.I.C.O. claims against Brown[3] which gives Dickerson standing.[4]

---

[1] Henriksen v. Bentley 644 F2d 852, 852, (10th Cir. 1981)

2. Dopp v. Loring, 02-5017, 2002 WL 31839852 (10th Cir. Dec. 19, 02)
3. U.S. Ex-Rel Verdone v. Cir Court of Taylor County 851 F.Supp 345, 347 (W.D. Wis. 1993)
4. Leighton Ares School District v. Gilbert 787 F. Supp 421, 431 (M. D. Pa. 1992)

The acts taken by Brown were not as a clerk, therefore she does not have absolute judicial immunity. It is the nature of the function being performed and not mere identity of a person as a clerk that determines absolute immunity.[5]

The Supreme court has held that the defense of absolute immunity is unavailable to a court clerk for actions taken outside of her authority.[6] Further in *Kalina* the Supreme Court stated; "...... when personally attesting to the truthfulness ...... is not acting as an advocate but a complaining witnesses" @ 508-509, (Complaint page 16 #79 and 80; page 19 #101 and 102; and page 19 #104 through 113. Brown has testified and made a record that she was without authority to take Dickerson's funds and Brown committed fraud in doing so because she was not acting as a clerk at the time. There was no professional judgment involved in her actions as the statue that gave her the authority to take the funds.

As in *Kalina* clerks do not enjoy absolute immunity for conduct in executing the seizure in which personally vouched the truth of the facts. Under 18 U.S.C. 1346 Dickerson has a intangible right to honest service by governmental employees.

(B)
R.I.C.O. AGAINST BROWN IS NOT BARRED BY THE ROOKER-FELDMAN DOCTRINE

Nothing in Dickerson's R.I.C.O. Complaint re-litigates any issues decided in the previous state and federal cases. The garnishment could not have been raised because the garnishments did not take place until after the final decision in all the cases cited by Brown.

---

[5] Van Deelen v. City of Eudora Kansas 53 F.Supp 2nd 1223, 1227-28 (D. Kan. 1999)

[6] Kalina v. Flecther 522 US 118 (1997)

Dickerson is not asking for any review in his R.I.C.O. complaint of any claims decided in the state and federal cases. The garnishments are a **post annulling** proceeding and are not a part of the decisions. Dickerson does not challenge the rulings of the state courts but the criminal actions by the defendants in the post annulling proceedings done without jurisdiction to do so.

Since Brown was not a party in the state or federal court actions named in her motion, and the actions were taken in a post annulling proceedings, the Rooker-Feldman Doctrine does not apply.

The Rooker-Feldman Doctrine takes it name from two(2) cases.[7] Under this doctrine a federal district court does not have **subject matter jurisdiction** to hear a **direct appeal** from a final judgment of a state court. The United States Supreme Court vested with jurisdiction to hear such an appeal.

Here Dickerson has not done a direct appeal based upon a final judgment of a state court. This Court has jurisdiction over the subject matter pursuant to 18 U.S.C. 1961 *et seq.* R.I.C.O., see Dickerson's 1st Amended Complaint, (I) Jurisdiction page 1.

Furthermore a R.I.C.O. action is not a direct appeal of a state court judgment but is independent criminal jurisdiction over crimes committed.

The Supreme Court has applied Rooker-Feldman to hold that a federal district court is without subject matter jurisdiction only in two (2) cases from which the doctrine takes its name.

In *Rooker* the plaintiff had lost in state court. The legal wrong alleged was that the state court had made errors in deciding the constitutional claims, rather than the **defendant acted illegally.** Dickerson alleges in his complaint, pages

---

[7] Rooker v. Fidelity Trust Co. 263 US 413 (1923)
Dist. Of Columbia Court of Appeals v. Feldman 460 US 462 (1983)

11-24 how the defendants acted illegally.

In essence *Rooker* held that when a losing plaintiff in state court brings a suit in Federal District Court asserting legal wrongs, **allegedly erroneous legal rulings** of the state court, and seeks to vacate or set aside the judgment of the state court, the federal suit is a forbidden de facto appeal. Here Dickerson does not challenge to vacate or set aside any judgment in any of the listed state court actions previously decided. Dickerson charges violations of the federal criminal statues under R.I.C.O. of action taken though an association-in-fact enterprise, see Dickerson's 1st Amended Complaint page 12 paragraphs 64-67.

In *Feldman,* two plaintiffs were graduates of an unaccredited law school who petitioned the District of Columbia district court for waivers that prevented them from taken the bar examination. The plaintiffs has previously petitioned the local courts for waivers based upon the 5th Amendment and anti trust laws, and were denied.

The Supreme Court noted that the District of Columbia local court had acted both judicially and legislatively. In applying the rule to deny the waivers it acted judicially, @ 479. In promulgating its rule, on the other hand it acted legislatively, @ 485 and 486.

The Supreme Court divided its analysis into two parts. First the Court held that part of the plaintiffs' suit was a forbidden de-facto appeal of the judicial decision of the D.C. court. Here Dickerson is not appealing any Kansas State court decisions.

Second the Supreme Court permitted the plaintiff's challenge to the local court's legislature acts of promulgating its rule regulating the bar examination @487. This was a challenge to the validity of the rule rather than a challenge to the application of the rule.

The Supreme Courts' answer was straightforward. [I]f the constitutional claims presented to the United States District

Court are 'inextricably intertwined' withe the states court denial in a judicial proceeding, then the District Court is in essence being called upon to review the state court decision. Here Dickerson raised only federal criminal and state criminal violations that was not raised in the state court proceedings. Therefore the issues raised in Dickerson's R.I.C.O. complaint are not 'inextricably intertwined' with the state court's judicial proceedings and do not require review of a judicial decision in any state court proceedings then this Court has subject matter jurisdiction.

Therefore the Feldman test for inextricably intertwined does not apply in Dickersons' R.I.C.O. actiion and cannot be construed as a forbidden de-facto appeal. This Circuit has already set precedent on this issue[8] when Judge Ebel stated: "a federal District Court plaintiff is barred by Rooker-Feldman from seeking to **vacate** and to **set aside** a previously entered state judgment ....." Certainly in Dickersons' R.I.C.O. complaint he has not asked for not does he seek to vacate or set aside any state court judgment.

The United States Supreme Court has never, outside of Rooker and Feldman themselves employed the doctrine to hold that a federal district court is without subject matter jurisdiction. It is a forbidden de-facto appeal under Rooker-Feldman when a plaintiff in federal district court complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court. Dickersons' complaint is not against the judgments of the state court, nor does he seek relief from the judgments of the state court, only the criminal wrongs committed by the defendants. Dickerson does not complain of a **legal injury** caused by a state court judgment, but rather a legal injury caused by an adverse party which Rooker-Feldman does not bar jurisdiction. Even if the federal plaintiff and the adverse party have litigated the same or a similar dispute in state court, a federal suit under R.I.C.O may proceed under the long-standing rule permitting parallel state and federal litigation.[9]

---

[8] Facio v. Jones 929 F2d 541, 543 (10th Cir. 1991)

Dickerson has not brought a forbidden de-facto appeal from any of the earlier state court judgments. The inextricably intertwined analysis of Feldman does not apply in this complaint. The claims against the clerk (Brown) are not a claim precluded, because the clerk was never a party in any state court actions.

Only a court of competent jurisdiction may here cases arising under federal mail fraud, wire fraud, money laundering conspiracy statues, and the R.I.C.O. statue 18 U.S.C. 1961 *et seq.* includes no jurisdictional restrictions.[10]

Dickerson is not claim precluded from bringing a claim which could not have been litigated during a prior action. Certainly the criminal claims in Dickerson's 1st Amended Complaint took place after the final decision in the state court proceedings.

For these reasons, the Rooker-Feldman Doctrine does not apply in this cause and this court should deny defendant Brown's motion on the Rooker-Feldman Doctrine.

C

DICKERSON STATED A R.I.C.O. CAUSE OF ACTION

Dickersons' R.I.C.O. Complaint states with specificity mail fraud, 18 U.S.C. 1341 (Complaint pages 11 through 14); intangible right to honest government service, 18 U.S.C. 1346 (Complaint pages 21 and 22); conspiracy, 18 U.S.C. 341 (Complaint pages 15 and 16); signing false documents

---

[9] Atlantic Coast Line Railroad v. Brotherhood of Locomotive Engineers 398 US 281, 295 (1970)

[10] Allen v. McCurry 449 US 90, 103-105 (1980)

18 U.S.C. 1001, (Complaint pages 19 and 20).

Dickerson does not sprinkle the word FRAUD in his complaint, but sets forth the facts that are violations of the federal and state criminal codes (Complaint pages 11 through 24).

First Dickerson set forth the enterprise (Complaint page 8) as an association-in-fact.[11] The association-in-fact in UNA is very similar to the one that Dickerson set forth with particularity.

Brown's motion on pages 10 and 11 shows that she do not fully understand the existence of an association-in-fact enterprise. The law of this Circuit is that an association-in-fact of persons could form an **enterprise** that is separate and distinct from each members of the association.[12]

The Supreme court made it clear that single schemes can be a pattern of racketeering and they do not have to have a long term pattern.[13] Brown totally avoids the subject of the pattern raised in Dickersons' Complaint pages 7, and 12 through 15. There are others, other than Dickerson whom have been the subject of the predicate acts. The fact is these predicate acts continue today and Dickerson will produce in discovery others that have been defrauded by the same criminal predicate acts of mail fraud, 18 U.S.C. 1341; intangible right to honest government service, 18 U.S.C. 1346; conspiracy 18 U.S.C. 371; false documents 18 U.S.C.1001; and State of Kansas violations.

Dickersons' Complaint on page 16 and 17 shows a treat of continual criminal activity, and the facts shows that the criminal activities continues up to today. The acts are not over weeks or months, but started prior to Dickerson and is open-ended, that is it has continued since the criminal conduct against Dickerson, which he will provide during discovery.

---

[11] UNA Plus, Inc. v. Apria Healthcare Group, Inc 29 F.Supp. 2nd 1253 (D. Kan. 1998)

[12] Sunbird Air Services, Inc. v. Beech Aircraft Corp. 789 F.Supp. 364, 366-367 (D. Kan. 1992)

[13] H.J. Inc. v. Northwestern Bell Telephone 492 US. 229 (1989)

Mailing a journal entry that is a fraud and false, meets the elements of mail fraud and is a material issue for a jury to decide.

The convexity to interstate commerce under R.I.C.O. is minimal, and the operation of the defendants including Brown effects interstate commerce.[14]

The material fact in dispute here, which Brown demurs in her motion is simple; IS THE GARNISHMENTS LEGAL AND LAWFUL, OR WERE THEY CREATED UNLAWFULLY AND ILLEGALLY IN THE R.I.C.O. SCHEME?

D

BROWN IS NOT ENTITLED TO 11TH AMENDMENT IMMUNITY

Under R.I.C.O., which is quasi criminal there is no such 11th Amendment immunity for criminal acts done outside of an official's official capacity. 18 U.S.C. 1346 and 18 U.S.C. 1001 are criminal statue that other state officials have been successfully prosecuted for under R.I.C.O.

Dickerson is not seeking damages from Brown in her official capacity when she unlawfully and illegally created documents, she shed her cloak of immunity, especially when she acted in conspiracy with the other defendants. The amended statue of 18 U.S.C. 1346 by Congress makes it clear that Dickerson has the intangible right to a good and honest government.

---

[14] Cowan v. Corley 814 F2d 223 (5th Cir. 1987)
Corporacion Insular De Seguros v. Menoz 826 F.Supp. 599 (D. P.R. 1993)
MDO Development Corp. v. Kelly 729 F.Supp. 579 (S.D. New York 1989)

E

COLLATERAL ESTOPPEL DOES NOT BAR DICKERSONS' R.I.C.O. COMPLAINT AGAINST BROWN

Brown makes the bald statement without point to one place in the record of the previous cases that these R.I.C.O. claims have been litigated. Dickerson incorporates herein by reference his response in Issue (B) by reference.

The R.I.C.O. issues are criminal code violations that have never been adjudicated in any landlord/tenant dispute that Dickerson has bee involved with in Kansas state courts.

It is simple, in Dickersons' Complaint page 20 #115 forward sets forth the fact that the clerk under 18 U.S.C. 1346 deprived Dickerson of the intangible right to good and honest government. Page 21 #118 sets forth the criminal violation. Page 21#119 sets forth the criminal violation of 18 U.S.C. 1341 (mail fraud) and 18 U.S.C. 1346.

Brown cannot cite anywhere in the state court proceedings where this was adjudicated, because "IT WAS NEVER" .

Brown has failed in her motion to cite the record with specificity of her support of her claims, and she has not placed an affidavit before this Court as to her assertion because she cannot. Brown has no record attached to support her claim. WHERE IS THE GARNISHMENTS?

For there reasons and dickersons' attached affidavit he asks this Court to deny the Clerk's Motion to Dismiss.

Respectfully submitted,

"s/ Durand Dickerson"

APPENDIX-K
UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

Durand Dickerson

JUDGMENT IN A CIVIL CASE

Plaintiff

V.

CASE NUMBER: 03-2337-JWL

G. Ronald Bates, Jr.; Charlene
Brown; Paul Leavitt; Deborah
Leavitt; Crow, Clothier & Bates
a Kansas Corporation.

Defendants

[X] Decision by Court. This action came before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

pursuant to the Memorandum and Order filed on October 22, 2003, that the plaintiff shall take nothing, that the action is dismissed on the merits, and that the defendants shall recover from plaintiff their costs of action herein.

October 22, 2003
Date

RALPH L. DeLOACH
Clerk

S/SHARON SCHEVERER
(By) Deputy Clerk

APPENDIX-L
NOTICE OF APPEAL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DURAND DICKERSON
Plaintiff

FILED
U.S. DISTRICT COURT
DISTRICT OF KANSAS

03 NOV 20 AM 10:54

RALPH L. DeLOACH
CLERK

BY______________DEPUTY
AT KANSAS CITY, KS.

vs.

CASE NO. 03-2337-JWL

G. RONALD BATES JR.; CHARLENE
BROWN; PAUL LEAVITT; DEBORAH
LEAVITT; CROW, CLOTHIER & BATES
a Kansas Corporation;
Defendants

NOTICE OF APPEAL

COME NOW, Durand Dickerson, plaintiff, and files this Notice of Appeal from the United States District Court, District of Kansas dismissal of this case filed on October 22, 2000, to the United States Court of Appeals for the tenth circuit.

Durand Dickerson
____
Durand Dickerson

APPENDIX-M
03-3341

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

DURAND DICKERSON
Plaintiff/Appellant

V.

G. RONALD BATES JR., CHARLENE BROWN; PAUL LEAVITT; DEBORAH LEAVITT; CROW, CLOTHIER & BATES; a Kansas Corporation
Defendants/Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURTFOR THE DISTRICT OF KANSAS, CASE NO. 03-2337 JWL

APPELLANT'S BRIEF

DURAND DICKERSON
P.O. BOX 572
LEAVENWORTH, KANSAS 6604
(913) 351-2919

TABLE OF CONTENTS

TABLE OF CONTENTS.. i

TABLE OF AUTHORITIES.. ii, iii

STATUES AND MISCELLANEOUS iv

JURISDICTIONAL STATEMENT 1
- A. BASIS FOR DISTRICT COURT JURISDICTION...1
- B. BASIS FOR APPELLATE COURT JURISDICTION
- C. FILING DATE TO ESTABLISHING TIMELINESS OF APPEAL 1
- D. APPEAL IS A FINAL ORDER................................ 1

STATEMENT OF ISSUES PRESENTED FOR REVIEW ..2

STATEMENT OF THE CASE... 2

STATEMENT OF FACTS.. 3

SUMMARY OF ARGUMENTS... 4

ARGUMENTS
1. INEXTRICABLY INTERTWINED......................... 5
2. CLERK AS A PARTY... 9
3. SHOULD MICHAEL CROW HAVE BEEN DISQUALIFIED 9

CONCLUSION.. 11

CERTIFICATE OF SERVICE... 12

CERTIFICATE OF COMPLIANCE.................................. 12

THERE ARE NO PRIOR OR RELATED APPEALS

TABLE OF TABLE OF AUTHORITIES

Page

Barnett v. State of Colorado 03-1225 (10th Cir. October 10, 2003 8
Bisbee v. McCarty 00-1115 (10th Cir. February 2, 2001)..... 8
Cole v. Ruidoso Municipal School, 43 F3d 1373, 1384 (10th Cir. 1994) 9
Continental Casualty v. Hempel 97-2136 (10th Cir. February 22, 2001).......... 8
Dale v. Moore 121 F3d 624, 626 (11th Cir. 1997).......... 7
District of Columbia Court of Appeals v. Feldman 460 US 462 (1983) 5
Doe v. Pringle 550 F2d 596, 597 (10th Cir. 1976).......... 5
Ellis v. CAC Financial Corp. 00-6170 (10th Cir. March 26, 2001) 8
English v. Meacham 01-4137 (10th Cir. Nov. 29, 2001) 8
Harpin v. Oakley Customs Homes Inc. 99-1557 (10th Cir. October 17, 2000) 8
Johnson v. De Grandy 512 US 997 (1994).......... 7
Johnson v. Riddle 305 F3d 1107 (10th Cir. 2002).......... 8
Johnson v. Rodrigues (Orozco) 226 F3d 1103 (10th Cir. 2000) 5, 7, 8
Jordan v. Brazil 00-3024 (10th Cir. October 6, 2000).......... 8
Kalina v. Fletcher 522 US 178 (1997)..........9
Kenmen Engineering v. City of Union 314 F3d 468, 476 (10th Cir. 2002) 6, 8
Kiowa Indians Tribe of Oklahoma v. Hoover 150 F3d 1163, 1170-71 (10th Cir. (1998) 6, 8
Lecates v. Barker 00-4026 (10th Cir. Nov. 16, 2000).......... 8
Lemonds v. St Louis County 222 F3d 488, 494 (8th Cir. 2000) 6
McNally v. United States 483 US 350 (1987).......... 9

Penzoil Co. v. Texaco Inc. 481 US 1 (1987) 6,11
Myers v. Third Judicial District Court 98-4161 (10th Cir. June 30, 1999)................................ 8
Pittsburg County Rural Water v. City of McAlester 02-7080 (10th Cir. October 17, 2003) 8
Read v. Klein 99-5058 (10th Cir. January 9, 2001).............. 8
Sherkat v. Vano 03-3143 (10th Cir. September 18, 2003) 8
Varallo v. Supreme Court of Colorado 98-1243 (10th Cir. March 16, 1999) 8

Statues and Miscellaneous

18 U.S.C. 2 1

18 U.S.C. 371 .... 1, 3

18 U.S.C. 1341 .... 1, 3

18 U.S.C. 1342 .... 1, 3

18 U.S.C. 1343 .... 1, 3

18 U.S.C. 1344 .... 1, 3

18 U.S.C. 1346 .... 1, 3, 9

18 U.S.C. 1961 *et seq* 1

28 U.S.C. 1291 1

28 U.S.C. 1331 1

28. U.S.C. 1391(b) 1

K.S.A. 21-3302 3

K.S.A. 21-3701 *et seq.* 1

K.S.A. 60-701 *et seq* 1

F.R.A.P. 4(a)(1)(A) 1

Laurence H. Tribe, American Constitutional Law 594 N. 59 (3rd Edition 2000) 7
ABA Model Code of Professional Responsibility E-C5-10 10

JURISDICTIONAL STATEMENT

(A)

BASIC FOR DISTRICT COURT'S JURISDICTION

Dickerson in his first amended complaint under section I set forth the jurisdiction as 18 U.S.C. 1961 *et seq,* the Organized Crime Control Act of 1970, Public Law 91-452 section 901(a) 84 Stat. 941, 28 U.S.C. 1331, 18 U.S.C. 371, 1341, 1342, 1343, 1344, 1346, 18 U.S.C. 2, 18 U.S.C. 1964(c) and K.S.A. 60-701 *et seq.* 21-3701 *et seq.,* 33-101 *et seq.,* and venue pursuant to 28 U.S.C. 1391(b). This is a R.I.C.O. action.

(B)

BASIC FOR APPELLATE COURT JURISDICTION

This Court has jurisdiction to hear final decisions of the United States District Court, the District of Kansas pursuant to 28 U.S.C. 1291.

(C)

FILING DATES ESTABLISHING TIMELINESS OF APPEAL

The District Court issued it's Memorandum and Order on October 22, 2003, and Dickerson filed his Notice of Appeal on November 20, 2003. Pursuant to F.R.A.P. 4(a)(1)(A) Dickerson timely filed his Notice of Appeal.

(D)

APPEAL IS FROM A FINAL ORDER

The District Court's Memorandum and Order (*Aplt. App. 1 pg. 1-8*) is a final order which disposed of all the parties claims by granting the defendants their Motion to Dismiss, (*Aplt. App. 2, pg. 2 #12 and #16)*.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Dickerson will present three (3) issues for review. First is the District Court's Order (*Aplt. App. 4, pg. 1-3*) denying Dickerson's Motion to Disqualify Michael Crow. The second is the District Court's Memorandum and Order dismissing the case based on the Rooker-Feldman Doctrine, and third is the dismissal of Charlene Brown as a defendant.

STATEMENT OF THE CASE

This case arises out of the defendant Charlene Brown issuing funds to all the other defendants in a conspiratorial effort to thwart the rules of garnishment in the State of Kansas and deprive Dickerson of his funds, (*Aplt. App. 3, pg. 7 #44 through pg. 8 #46*).

On July 1, 1999 defendant Brown issued $3,600.00 to defendant G. Ronald Bates Jr. without a court order or a garnishment to do so (*Aplt. App. 3, pg. 16 #80*).

On or about July 1, 1999 defendant Crow, Clothier & Bates deposited the $3,600.00 in their bank account, (*Aplt. App. 3, pg. 16 #84*).

On or about July 1, 1999 defendant Crow, Clothier & Bates and defendants Paul and Deborah Leavitt exchanged checks concerning the $3,600.00 (*Aplt. App. 3, pg. 16 #81*).

On other occasions the defendants took $4,259.25 from Dickerson without court order to do so, (*Aplt. App. 3 pg. 20 #108*).

Dickerson filed this R.I.C.O. action on June 30, 2003, and on October 22, 2003 the Honorable John W. Lungstrum, the United States District Judge issued his Memorandum and Order granting the defendant's Motion to Dismiss (*Aplt. App. 2 pg. 2 #12 and #16*).

STATEMENT OF FACTS

On or about January 13, 1999 an order for a non-wage garnishment was issued by defendant Charlene Brown without statuary authority and executed by a sheriff without authority to do so, (*Aplt. App. 3, amended complaint page22 #127*). On or about January 27, 1999 an order for a non-wage garnishment was issued by defendant Charlene Brown without judicial or statutory authority to do so, (*Aplt. App. 3 pg. 22 #128).*

On July 1, 1999 defendant Charlene Brown garnished $3,600.00 from plaintiff Dickerson without judicial or statutory authority to do so, (*Aplt. App. 3 pg. 22 #130).*

On September 19, 1999 in live testimony, defendant G. Ronald Bates Jr. testified that $4,259.25 was taken from Dickerson without judicial or statutory authority to do so, (*Aplt. App. 3, amended complaint page 23 #133*).

All these actions took place after a final order in a landlord-tenant dispute that all the parties had previously been parties to.

All these actions constitutes a R.I.C.O. cause of action (*Aplt. App. 3, pages 11 through 24),* U.S.C. 371, 1341, 1342, 1343, 1344, 1346, and K.S.A. 21-3302.

SUMMARY OF THE ARGUMENT

Michael Crow as a corporate officer of defendant Crow, Clothier & Bates and a partner of Defendant G. Ronald Bates Jr., and prior counsel of defendant Paul Leavitt and Deborah Leavitt should have been disqualified as counsel for the named defendants.

The use of the Rooker-Feldman Doctrine and inextricably intertwined issue to dismiss Dickerson complaint is contrary to Tenth Circuit case law.

The dismissal of Charlene Brown as a defendant based on absolute judicial immunity and 11th Amendment immunity is contrary to the law.

ARGUMENT AND AUTHORITIES

(B)

INEXTRICABLY INTERTWINED

STANDARD OF REVIEW

Johnson v. Rodrigues (Orozco) 226 F3d 1103 (10th Cir. 2000)

A federal District Court may not entertain a challenge to a state courts' judgment or a challenge that is inextricably intertwined with such a judgment, *Johnson* @ 1108.

Inextricably intertwined is found in Feldman[1] where the Supreme Court's decision was straightforward. It said that "if the **constitutional** claims presented to the United States District Court are 'inextricably intertwined' with the state courts' denial in judicial proceeding, than the district court in essence is being called upon to review the state courts' decision".

Dickerson does not raise any constitution claims in his R.I.C.O. action. Dickerson raised federal and state criminal statutory violations that took place long after the final order was issued in the state proceedings.

The criminal violations in July 1999 was thirty (30) months after the final order on January 14, 1997 in the civil case. Dickersons' R.I.C.O. action for criminal violation is not a discrete portion of his complaint[2] it is his total complaint. It was error to dismiss Dickersons' R.I.C.O. action since his complaint cannot be construed in any fashion as an attempt to appeal a particular state court proceeding order, *Johnson* @ 1109.

---

[1] *District of Columbia Court of Appeals v. Feldman* 460 US 462 (1983)

In applying the inextricably intertwined standard the district court made a error in that it did not determine whether the R.I.C.O. cause of action resulted from the state courts' judgment itself or they were distinct from that judgment[3].

The Supreme Court has identified two categories of cases that fall outside Feldman's inextricably intertwined umbrella. First, under Feldman, a party may bring a constitutional challenge to a state law, provided that the party does not request that the federal court upset a prior state court judgment applying that law against the party[4]. In Dickersons' R.I.C.O. complaint he does not request that the federal district court upset the state courts' judgment in his landlord-tenant dispute. Second under *Pennzoil*[5] a party may challenge state proceedings for enforcement of a judgment, where consideration of the underlying state court decision is not required[6].

Dickerson in his R.I.C.O. action has charged criminal offenses under Federal and Kansas state law of the procedures used to garnish Dickerson's funds, (state procedures). Dickerson has not asked for any review of the underlying state court decision in his landlord-tenant dispute action, (*Aplt. App 1, Memorandum and Order page 5*). *Pennzoil* is on point with Dickersons' argument and the District Court;s decision is contrary to the U.S. Supreme Courts' case law.

---

[2] *Doe v. Pringle* 550 F2d 596, 597 (10th Cir. 1976)

[3] *Kenmen Engineering v. City of Union* 314 F3d 468, 476 (10th Cir. 2002)

[4] *Lemonds v. St. Louis County* 222 F3d 488, 494 (8th Cir. 2000)

[5] *Pennzoil Co. v. Texaco Inc.* 481 US 1 (1987)

[6] *Kiowa Indians Tribe of Oklahoma v. Hoover* 150 F3d 1163, 1170-71 (10th Cir. 1998)

The district court through procedural process is able to decide the R.I.C.O. complaint without even calling into question the state court judgment, (*Aplt. App. 1 pg. 6*). As in *Pennzoil,* Dickersons' R.I.C.O. complaint challenges the criminal violations of State of Kansas procedures for enforcement of the judgment. The district court dodge this issue by attempting to state that Dickerson sustained loss as a result of having to post a bond (*Aplt. App. 1 pg. 6 & 7*), when in fact Dickerson raised a criminal complaint on the part of the defendants garnishment without a court order to do so, (*Aplt. App. 3 pg. 16*). If Dickerson goes to trial on his R.I.C.O. claim and the jury would find for Dickerson, it would not make any decision on the state court judgment, only the post judgment procedures on garnishment.

(B)
RELATED PARTIES

STANDARD OF REVIEW

Johnson v. De Grandy 512 US 997 (1994)

The Supreme Court in Johnson and this circuit in *Johnson v. Rodrigues (Orozco)* decided that the Rooker-Feldman Doctrine should not be applied against non-parties. In Dickersons' R.I.C.O. action, G. Ronald Bates Jr., Crow, Clothier & Bates, and Charlene Brown were not parties in the landlord-tenant dispute[7]. In conducting its' analysis the district court failed to pay close attention to the parties in the landlord-tenant dispute and Dickersons' R.I.C.O. complaint.

(C)

DICKERSON LACKED A REASONABLE OPPORTUNITY TOLITIGATE HIS R.I.C.O. CLAIMS IN THE STATE COURT

STANDARD OF REVIEW

Dale v. Moore 121 F3d 624, 626 (11th Cir. 1997)

The Rooker-Feldman Doctrine applies as long as Dickerson had a reasonable opportunity to raise his federal claims in state court proceedings. If Dickerson had no reasonable opportunity, this court has to consider the federal R.I.C.O. claims are not inextricably intertwined, *Johnson* @ 1110. The attempted garnishments took place long after the final judgment and appeal in the landlord-tenant action. The fact is, that Dickerson did not discover the R.I.C.O. violations of
the attempted garnishment until years after the landlord-tenant dispute became final making R.I.C.O. the procedural avenue for Dickerson to pursue his claims.

---

[7] ***Laurence H. Tribe, American Constitutional Law*** **594 N. 59 (3rd Edition 2000)**

(D)

TENTH CIRCUIT CASE LAW

In the last three (3) years, the Honorable Circuit Judge Henry five (5) times has cited *Kiowa Indian Tribe* and *Rodrigues (Orozco)* as the case law of this circuit on inextricably intertwined[8].

The Honorable Circuit Judge Tacha has four (4) times cited *Kiowa Indian Tribe* and *Rodrigues (Orozco)* as the case law of this circuit on inextricably intertwined[9].

The Honorable Circuit Judge Briscoe on five (5) occasions has cited *Johnson* as the case law of this circuit on inextricably intertwined[10].

The Honorable Circuit Judge Baldock on three (3) occasions has cited *Johnson* as the case law of this circuit on inextricably intertwined[11].

---

[8] *Varallo v. Supreme Court of Colorado* 98-1243 (10th Cir. March 16, 1999)
Myers v. Third Judicial District Court 98-4161 (10th Cir. June 30, 1999)
Johnson v. Rodrigues (Orozco) 226 F3d 1103 (10th Cir. 2000)
Harpin v. Oakley Custom Homes Inc. 99-1557 (10th Cir October 17, 2000)
Jordan v. Brazil 00-3024 (10th Cir. October 6, 2000)

[9] *Lecates v. Barker* 00-4026 (10th Cir. November 16, 2000)
Read v. Klein 99-5058 (10th Cir. January 9, 2001)
Bisbee v. McCarty 00-1115 (10th Cir. February 2, 2001)
Continental Casualty v. Hempel 97-2136 (10th Cir. February 22, 2001)

[10] *Ellis v. CAC Financial Corp.* 00-6170 (10th Cir. March 26, 2001)
English v. Meacham 01-4137 (10th Cir. November 29, 2001)
Kenmen Engineering v. City of Union 314 F3d 468 (10th Cir. 2002)
Johnson v. Riddle 305 F3d 1107 (10th Cir. 2002)
Sherkat v. Vano 03-3143 (10th Cir. September 18, 2003)

[11] *Barnett v. State of Colorado* 03-1225 (10th Cir. October 10, 2003)
Pittsburg County Rural Water District No. 7 v. City of McAlester 02-7080 (10th Cir. October 17, 2003)

Therefore the law of the Tenth Circuit is well settled, and the district court Memorandum and Order contradicts this circuit and the United States Supreme Court case law.

(E)

WAS IT PROPER TO DISMISS DEFENDANT BROWN

STANDARD OF REVIEW

McNally v. United States 483 US 350 (1987)

The Supreme Court has ruled that the defense of absolute immunity is not available to a court clerk for actions taken outside of her authority[12]. Dickerson (*Aplt. App. 3, amended complaint page 16 #79,80 page 19 #101,102, 104 and 113*) have shown that defendant Brown testified that she was without authority, statuary or judicial to take Dickersons' funds and disburse them to the other defendants.

Under 18 U.S.C. 1346 clerks such as defendant Brown do not enjoy absolute immunity, and Dickerson is entitled to the right to honest services from government employees.

The Rooker-Feldman Doctrine cannot apply to Brown as she was not a party to the state court action of the landlord-tenant dispute.

Dickerson is not seeking damages from defendant Brown in her official capacity, but has set forth violations of R.I.C.O., which took place without statuary or judicial authority to do so, therefore the eleventh amendment immunity does not apply.

---

[12] *Kalina v. Fletcher* 522 US 178 (1997)

(F)

SHOULD ATTORNEY MICHAEL CROW HAVE BEENDISQUALIFIED FROM REPRESENTING THE PARTIES?

STANDARD OF REVIEW

Cole v. Ruidoso Municipal School 43 F3d 1373, 1384 (10th Cir. 1994)

On August 21, 2003 Dickerson filed a Motion to Disqualify Michael Crow in representation of the defendants (*Aplt. App. 2 pg. 3 #11*).

Dickerson has set forth that ABA Model Code of Professional Responsibility E-C5-10 states that if the lawyer becomes a witness, the lawyer **must** be disqualified to act as a lawyer in the case, and that the ethical canons of the Kansas Bar have a general prohibition against "lawyer witnesses".

First and foremost the law firm of **Crow**, Clothier & Bates is a defendant. Michael P. Crow has his name listed on the firms' letterhead. Therefore it is beyond peradventure that Michael P. Crow is a possible defendant and more likely than not a witness to be called.

The district judge (*Aplt. App. 4 pg. 2*) states: "Based upon the record before the court, it appears the plaintiff can prove none of these things. Mr. Crow had no involvement in the transactions or representation that are at issue in this lawsuit".

The record before the court shows that Mr. Crows name as part of the law firm that represented some of the defendants, and further shows him as a partner of Mr. Bates one of the defendants in this suit.

will be a necessary witness as to the elements of money laun

Dickerson complaint shows that the funds in question were laundered through the bank account of Crow, Clothier & Bates and with discovery and testimony Michael Crow could besides testifying be a defendant based on his participation in the money laundering conspiracy.

Seeing that the firm of Crow, Clothier & Bates is listed as a defendant and Mr. Crow is a owner, officer or partner, he dering as to the law firm of Crow, Clothier & Bates.

Based upon discovery, the structure of the law firm of Crow, Clothier & Bates, and the financial transactions of Crow, Clothier & Bates, Mr. Crow will have knowledge that is not available through others, and could make him a defendant in this action.

For these reasons the district court's order to deny the plaintiff's motion is contrary to facts and law.

CONCLUSION

For the reasons argued, Dickerson asks this court to reverse the judgment of the district court, order that Michael P. Crow is disqualified to represent the defendants, that defendant Brown is a proper party

and that the Rooker-Feldman Doctrine does not apply to Dickersons' post judgment
claims as a matter of law and facts, and that the Rooker-Feldman Doctrine judgment violates *Pennzoil Co. v. Texaco Inc.* 481 US 1 (1987).

Respectfully submit

"s/Durand Dickerson"

Durand Dickerson

P.O. Box 572

Leavenworth, Kansas 66048

(913) 351-2919

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION

My brief was prepared in a monospaced typeface and contains **199 lines** of text.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

"s/Durand Dickerson"

Durand Dickerson

CERTIFICATE OF SERVICE

I, Durand Dickerson, certifies that on January 10, 2004 I mailed a true and correct copy of the attached Appellant Brief addressed to: Michael Crow, P.O. Box 707, 302 Shawnee Street, Leavenworth, Kansas, 66048 and to Steve Phillips, Assistant Attorney General, 120 S.W. 10th Street, Topeka, Kansas 66612-1597.

"s/Durand Dickerson"

Durand Dickerson

3

Supreme Court, U.S.
FILED

FEB 1 - 2005

OFFICE OF THE CLERK

No. 04-491

In The
Supreme Court of the United States

◆

DURAND DICKERSON,

Petitioner,

v.

G. RONALD BATES, JR., ET AL.,

Respondents.

◆

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

◆

BRIEF OF ALL RESPONDENTS IN OPPOSITION

◆

STEVE PHILLIPS
Counsel of Record
Assistant Attorney General, State of Kansas
120 SW 10th Ave., 2nd Fl.
Topeka, KS 66612
785-296-2215
Attorney for Charlene Brown

ROBERT D. BEALL
529 Delaware St.
Leavenworth, KS 66048
913-682-3822
Attorney
for G. Ronald Bates, Jr.,
Charlene Brown,
Paul Leavitt,
Deborah Leavitt,
and Crow, Clothier & Bates

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Because Plaintiff purports to attack post-judgment garnishment proceedings, does *Pennzoil Co. v. Texaco*, 481 U.S. 1 (1987) provide an exception to the *Rooker-Feldman* Doctrine allowing Plaintiff's suit to proceed.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

STATEMENT OF THE CASE 1

ARGUMENT 3

CONCLUSION 6

TABLE OF AUTHORITIES

Page

CASES:

Dickerson v. Leavitt Rentals, 995 F. Supp. 1242 (D. Kan. 1998) 1, 2

Dickerson v. Leavitt Rentals, No. 98-3053, 1998 WL 380923 (10th Cir. 1998) 1, 2

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) 2

Pennzoil Company v. Texaco Inc., 481 U.S. 1 (1987) 3, 5

Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) 2, 3, 4

True Heart Corp. v. River City Auto Sales, Inc., 32 Kan. App.2d 237, 82 P.3d 519 (2003) 5

Vargas v. City of New York, 377 F.3d 200 (2nd Cir. 2004) 4

Younger v. Harris, 401 U.S. 37 (1971) 3

STATUTE:

28 U.S.C. § 1254(1) 1

OPINIONS BELOW

The opinion of the Tenth Circuit Court of Appeals (Pet. App. A) is unreported but is noted at 104 Fed. Appx. 699. The opinion of the Kansas District Court (Pet. App. B) is reported at 287 F. Supp.2d 1251. A prior, related opinion of the 10th Circuit Court of Appeals is unreported but is noted 153 F.3d 726 and can be found at 1998 WL 380923. The district court opinion in the prior, related case is reported at 995 F. Supp. 1242.

◆

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on July 7, 2004. The petition for a *writ of certiorari* was served on October 5, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

◆

STATEMENT OF THE CASE

In 1996, Paul and Deborah Leavitt retained G. Ronald Bates of the law firm Crow, Clothier & Bates to file suit against Durand Dickerson to have him evicted from commercial property they own. They later filed a separate action for damages against Dickerson. The Leavitts prevailed in both cases. Dickerson attempted to appeal in both cases, but his appeals were dismissed by the Kansas Court of Appeals.

The Leavitts then sought and obtained post judgment relief (execution and garnishment) in order to satisfy the judgment. Dickerson attempted to collaterally attack the underlying judgment and attack the post-judgment proceedings in Kansas Court of Appeals Case No. 984356 and 83,451 (attached to Defendant Brown's Memorandum to Dismiss, Doc. # 17 as Exhibits C & D), both of which were also dismissed for his failure to comply with appellate procedure.

Dickerson then filed a federal action against the Leavitts and Leavitt Rentals and two state court judges, along with others. *Dickerson v. Leavitt Rentals*, 995 F. Supp. 1242 (D. Kan. 1998). It was dismissed on grounds of the *Rooker-Feldman*[1] Doctrine and failure to state a claim. The dismissal was affirmed on appeal, with the court describing Dickerson's arguments as "patently frivolous." *Dickerson v. Leavitt Rentals*, No. 98-3053, 1998 WL 380923 (10th Cir. 1998).

Dickerson then filed the present case making essentially the same factual allegations, changing defendants slightly, and changing his cause of action to a purported RICO claim. (Pet. App. F.) He basically argues that the defendants' efforts to collect the judgments were an illegal conspiracy. The district court dismissed on *Rooker-Feldman* grounds that the challenges to the post-judgment collection efforts were "inextricably intertwined" with the state court judgment, and that his claims that improper procedures were used in collection and could not be addressed without calling into question the underlying judgment. (Pet. App. F. pp. 5-6.)

◆

---

[1] The *Rooker-Feldman* Doctrine is the common name to the rule stating that federal district courts have no jurisdiction to review final judgments of a state court. The rule stems from the holdings in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923).

ARGUMENT

Dickerson's sole argument concerns a possible exception to the *Rooker-Feldman* doctrine suggested as *dicta* in concurring opinions in *Pennzoil Company v. Texaco Inc.*, 481 U.S. 1 (1987). *Dickerson argues that based on Pennzoil,* the *Rooker-Feldman* Doctrine does not apply to challenges to post-judgment proceedings. Dickerson's reading of these concurring opinions is far broader than intended, and the challenge in *Pennzoil* is factually different than his challenge.

The facts of *Pennzoil* were that Pennzoil obtained a judgment against Texaco in Texas state courts in excess of $11 billion against Texaco. *Id.* at 4. Under Texas law, in order to suspend execution of the judgment and appeal, Texaco would have had to post a bond in the amount of the judgment, along with interest and costs, which Texaco would have been unable to do. *Id.* at 4-5.

Texaco filed suit in federal court, arguing that Texas' bond provisions were unconstitutional. *Id.* at 7. The district court rejected the argument that the *Rooker-Feldman* Doctrine barred suit by Texaco, saying that the final judgment of the state court was not being called into question, only Texaco's constitutional right to raise claims on appeal. 626 F. Supp. 250, 254 (1986). The district court granted a preliminary injunction (against Pennzoil), which was affirmed by the Second Circuit. *Id.* at 8. The U.S. Supreme Court reversed, saying that the courts below should have abstained under *Younger v. Harris,* 401 U.S. 37 (1971). *Id.* at 6-18.

In a series of concurring opinions, three justices agreed with a concurring opinion written by Justice Brennan that the *Rooker-Feldman* Doctrine did not prohibit Texaco's suit. 481 U.S. at 18-20. Justice Brennan said,

> In *Rooker* and *Feldman,* the Court held that lower federal courts lack jurisdiction to engage in appellate review of state-court determinations. In this case, however, Texaco filed the § 1983 action only to protect its federal constitutional right to a meaningful opportunity for appellate review, not to challenge the merits of the Texas suit. Texaco's federal action seeking a stay of judgment pending appeal is therefore an action "'separable from and collateral to'" the merits of the state-court judgment. [Citations omitted.]

Id. at 21.

In *Pennzoil*, Texaco was asking for prospective, injunctive relief because Texaco argued it had no other remedy as to the bond and would be denied its constitutional rights. The exception to the *Rooker-Feldman* suggested by Justice Brennan is a limited one; it is for prospective relief only to prevent a denial of Constitutional rights, and only applies when there is no remedy in state court. *See Vargas v. City of New York,* 377 F.3d 200 (2nd Cir. 2004) ("where a federal plaintiff had an opportunity to litigate a claim in a state proceeding . . . , subsequent litigation will be barred under the *Rooker-Feldman* Doctrine if it would be barred under principles of preclusion." [quotation omitted])

Dickerson is not challenging the constitutionality of Kansas' post-judgment proceedings. He makes two allegations. His primary allegation is that the garnishments were improper because the underlying judgment was "void." *See* Aplt. App. F, p. 14 ¶ 69, p. 15 ¶¶ 74. He also makes more general allegations of misrepresentations and fraud. Dickerson is challenging how the garnishments were applied, not the overall scheme. In Kansas garnishments are routinely challenged in court, and are routinely appealed. *See e.g., True Heart Corp. v. River City Auto Sales, Inc.*, 32 Kan. App.2d 237, 82 P.3d 519 (2003).

The garnishments in this case are long since final. Given that appellate relief was available to Dickerson, the garnishments themselves should be treated by the same respect by federal courts as are state judgments. There is no reason or purpose for federal review.

Even if the garnishments themselves are not treated as if they are judgments themselves, Dickerson's attack on the garnishment calls into question the validity of the underlying judgment. As previously noted, Dickerson's main claim that the garnishment was illegal is that he believes the underlying judgment was "void." In other words, Dickerson does ask the court to reconsider the underlying judgment. Since Dickerson's claim is that the garnishments are based on an underlying judgment he views as void, his claims are "inextricably intertwined" with the underlying judgment. As justice Marshall stated in his concurring opinion in *Pennzoil*,

> [A] federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment.

481 U.S. at 25 (Marshall J, concurring).

◆

CONCLUSION

The petition for *writ of certiorari* should be denied.

Respectfully submitted,

STEVE PHILLIPS
Assistant Attorney General,
State of Kansas
120 SW 10th Ave., 2nd Fl.
Topeka, KS 66612
785-296-2215

Attorney for Charlene Brown

ROBERT D. BEALL
529 Delaware St.
Leavenworth, KS 66048
913-682-3822
Attorney
for G. Ronald Bates, Jr.,
Charlene Brown,
Paul Leavitt,
Deborah Leavitt,
and Crow, Clothier & Bates

2

Supreme Court, U.S.
FILED
FEB 16 2005
OFFICE OF THE CLERK

No. 04-491

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2004

DURAND DICKERSON
PETITIONER

v.

G. RONALD BATES JR., CHARLENE BROWN, PAUL LEAVITT, DEBORAH LEAVITT, and CROW, CLOTHIER & BATES, a KANSAS CORPORATION
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

DURAND DICKERSON
1514 10TH AVENUE
LEAVENWORTH, KANSAS 66048
(913)651-7397

REASONS FOR GRANTING THE WRIT

COMES NOW the petitioner, Durand Dickerson and files his reply to the respondents response.

I

STATEMENT OF THE CASE

Respondent alleges that there were only two (2) cases filed that are the subject of the illegal garnishment, post-judgment by the respondents. There were four (4) cases subject to the illegal garnishment in the Leavenworth County District Court filed by Paul and Deborah Leavitt. They are as follow:

1) Paul and Deborah Leavitt
V. Case No. 9608 LC 698
Durand Dickerson

2) Paul and Deborah Leavitt
V. Case No. 9612 LC 1284
Durand Dickerson

3) Paul and Deborah Leavitt
V. Case No. 9702 LC 190
Durand Dickerson

4) Paul and Deborah Leavitt
V. Case No. 9704 LC 474
Durand Dickerson

The respondents may have sought post-judgment relief, however they never received execution and garnishment which is the subject of this petition.

This present case does not make any factual allegations for relief that was raised in any prior proceedings.

ARGUMENT

Petitioner had no prior opportunity to litigate his claim of R.I.C.O. against the respondents. The respondents can cite and have not cited case law in Kansas as to litigation concerning illegal and unlawful garnishments post-judgment. The respondents citing of *True Heart Corp. v. River City Auto Sales, Inc.* 32 Kan. App. 2d 237, 82 P3d 519 (2003) in no way applies to illegal and unlawful post-judgment garnishment taking from a court bond funds without authority. Petitioner has no opportunity to raise this issue in the state court proceedings where he had no opportunity to litigate his post-judgment claim. (Respondents Response Page 4).

Petitioner's allegations are both constitutional, fifth amendment (Appendix C) and fourteenth amendment due process (Appendix D) and statutory, mail fraud 18 U.S.C. 1341 (Appendix F, page 13 # 66, 67, 68 and page 14 # 71 and 72). The inclusion of the words "void judgment" in the predicate acts does not in any fashion mean that petitioner is challenging a void judgment.

Petitioner is not challenging how the garnishments were "applied", but how they were collected post-judgment (Appendix F page 16 Overt Acts #79 through #90) which do not include any "application" of garnishments. (Appendix F page 20 #102, 108, page 21 #109 through #113; page 22 #117 through #123; page 23 #127 through #133). These overt acts set forth the overall scheme.

Petitioner could not have raised on appeal the unlawful and illegal garnishment, as he is not psychic, that is about six (6) weeks before the appellate decision was released by the Kansas Court of Appeals was when the illegal and unlawful post-judgment collection occurred. Petitioners' attack on the garnishments do not call into question the underlying judgment, **only** the unlawful and illegal collection and disbursement of the bond funds without a court order and prior to the Kansas Court of Appeals decision being released. Petitioner claims has nothing to do with the state court judgment, and any decision on his R.I.C.O. claims would not disturb the final judgment in the state court proceedings.

Petitioner statement throughout his R.I.C.O. claim on "void judgment" is only repetition of the respondents admissions. Nothing can be considered as inextricably intertwined with the state court "judgment". In *Pennzoil*, five Justices concluded in concurring opinions that *Rooker-Feldman* did not divest a federal court of jurisdiction of *Texaco's* constitutional challenge to Texas's "post-judgment" collection procedures. See *Pennzoil* 481 US 1 (1987) at 18 (Scalia J. concurring); id 21 (Brennan concurring); id at 28, 107 S. Ct. 1519 (Blackman J. concurring); id at 31 n.3 107 S. Ct. 1519 (Stevens J. concurring); cited in *Kenmen Engineering v. City of Union* 314 F3d 468, 475 (10th Cir. 2002).

Petitioner has brought a constitutional challenge, fifth amendment due process clause and fourteenth amendment due process clause to a state of Kansas law that does not request that the federal court upset the prior state court judgment, and the prior state court judgment did not "actually" decide that the state law at issue was factually constitutional.

Therefore there is no jurisdictional bar to the Court's decision in this case. Where the Court, in resolving petitioners' challenge to the constitutionality of the garnishment collection process does not need to decide any issue actually litigated in the Kansas court or is inextricably intertwined with the issues so litigated (*Pennzoil* 481 US 1 at 18 (Scalia J., O'Connor J. concurring).

Respectfully Submitted

Durand Dickerson
1514 10th Avenue
Leavenworth, Kansas 66048
(913)651-7397

VERIFICATION

I, Durand Dickerson, verifies pursuant to 28 U.S.C. 1746(2) that the information contained in the attached reply brief of the petitioner is true and correct to the best of my knowledge un the penalty of perjury.

Durand Dickerson

4

Supreme Court, U.S.
FILED
APR 2 6 2005
OFFICE OF THE CLERK

No. 04-491

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2004

DURAND DICKERSON
PETITIONER

V.

G. RONALD BATES, JR., ET AL.,
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITIONER'S PETITION FOR REHEARING

DURAND DICKERSON
1514 10TH AVENUE
LEAVENWORTH, KANSAS 66048
(913)651-7397

REASONS FOR REHEARING

This Court on March 30, 2005 in an unanimous decision and opinion in *Exxon Mobil Corporation v. Saudi Basic Industries Corporation,* 544 U.S.____ 2005 stated:

> "The *Rooker-Feldman"* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced "**and**" inviting district court review and rejection of those judgments." (Emphasis added).

The pivotal inquiry is whether petitioner seeks to set aside his state-court judgments, or whether he is in fact presenting an independent claim. That is, is the petitioner's federal claim "qualitatively" different than the questions of state law decided by the state-court.

This court in *Exxon Mobil* cited *Pennziol v. Texaco* 481 U.S. 1 (1987) and the concurring opinions of Justice Scalia and Justice Brennan states:

> "*Rooker-Feldman* ...... does not deprive the court of jurisdiction to decide...... Texas procedure;...... not to challenge the merits of the Texas suit."

Petitioner's Writ of Certiorari, page 4 sets forth the "post judgment procedural garnishment of petitioner's funds ...... were fraught with fraud .... would not require a finding that the state-court judgment was erroneous." This is supported by (Exhibit F par. 133).

The respondents in their brief page 5 stated:

> "Even if the garnishments are not treated as if they are judgments themselves, Dickerson's attack on the garnishment calls into question the validity of the **underlying** judgment." (Emphasis added).

Petitioner in his Reply Brief page 2 sets forth that he has not challenged how the garnishments were "applied" but the collection process post-judgment citing the overt acts set forth in the writ.

This Court in *Blaisdell v. Rochester, NH* (docket no. 04-1) granted certiorari based upon *Exxon Mobil* for property being taken, even though the respondent used Rooker-Feldman to deprive him of his property.

Petitioner is seeking **prospective** relief in Count IV and Count VII of his Amended Complaint. He does not seek expressly or impliedly to review or overturn any previous state-court decision nor does he seek to stop the enforcement of any previous state-court decision against him in Count IV and VII. Count IV and VII are a separate count in Dickerson's Amended Complaint; it does not incorporate or reference any other counts in Dickerson's Amended Complaint. This does not require the District Court to review the state-court decision. The judgment petitioner seeks is **prospective** and directed toward the rules and procedures for collecting posted bond funds rather than toward the State of Kansas decisions.

Petitioner does not request the District Court to interfere in any way with the decisions of the Kansas Supreme Court, Kansas Court of Appeals, or Kansas State Courts. Instead, he request monetary damages to correct alleged constitutional defects in the procedural rules applied in taking the bond funds. (See *Holloway v. Arkansas State Board of Architects,* Supreme Court Docket No 04-745 Writ of Certiorari).

Therefore, in this case did the Tenth Circuit Court of Appeals misperceive the narrow ground occupied by *Rooker-Feldman* and consequently erred in dismissing for lack of subject matter jurisdiction pursuant to this Court's opinion in *Exxon Mobil*?

For this reason this Court should rehear petitioner's Writ of Certiorari as to *Exxon Mobil* intervening circumstances and controlling and issue a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

Respectfully submitted,

Durand Dickerson
1514 10th Avenue
Leavenworth, Kansas 66048
(913)651-7397

CERTIFICATION

I, Durand Dickerson certifies that the above Petition for Rehearing is presented in good faith by this pro-se petitioner, and not for delay. Sign on this 26th day of April, 2005 under the penalty of perjury, pursuant to 28 U.S.C. 1746(2).

Durand Dickerson

Durand Dickerson pro-se
1514 10th Avenue
Leavenworth, Kansas 66048
(913)651-7397